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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, March 22, 2011
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AN67

Garnishment of Accounts Containing Federal Benefit Payments

AGENCY: Department of the Treasury, Fiscal Service (Treasury); Social Security Administration (SSA); Department of Veterans Affairs (VA); Railroad Retirement Board (RRB); Office of Personnel Management (OPM).

ACTION: Interim final rule with request for public comment.

SUMMARY: Treasury, SSA, VA, RRB and OPM (Agencies) are issuing an interim final rule to implement statutory restrictions on the garnishment of Federal benefit payments. The rule establishes procedures that financial institutions must follow when they receive a garnishment order against an account holder who receives certain types of Federal benefit payments by direct deposit. The rule requires financial institutions that receive such a garnishment order to determine the sum of such Federal benefit payments deposited to the account during a two month period, and to ensure that the account holder has access to an amount equal to that sum or to the current balance of the account, whichever is lower.

DATES: This interim final rule is effective May 1, 2011. Comments must be received on or before May 24, 2011.

ADDRESSES: The Agencies invite comments on all aspects of this interim final rule. In accordance with the U.S. government's eRulemaking Initiative, the Agencies publish rulemaking information on *http://www.regulations.gov.* Regulations.gov offers the public the ability to comment on, search, and view publicly available rulemaking materials, including comments received on rules.

The Agencies will jointly review all of the comments submitted. Comments on this rule must only be submitted using the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions on the Web site for submitting comments.
- *Mail:* Gary Grippo, Deputy Assistant Secretary, Fiscal Operations and Policy, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Room 2112, Washington, DC 20220.

Instructions: All submissions received must include the Agencies' names and RIN numbers 3206–AM17, 3220–AB63, 0960–AH18, 1505–AC20, and 2900–AN67 for this rulemaking. In general, comments received will be published on Regulations.gov without change, including any business or personal information provided. Treasury will also make such comments available for public inspection and copying in Treasury's Library, Room 1428, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 622–0990. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Gary Grippo, Deputy Assistant Secretary, Fiscal Operations and Policy, U.S. Department of the Treasury, at (202) 622–6222.

SUPPLEMENTARY INFORMATION:

I. Background and Summary of Proposed Rule

Background

On April 19, 2010, the Agencies published a proposed rule to address concerns associated with the garnishment of certain exempt Federal benefit payments, including Social Security benefits, Supplemental Security Income (SSI) benefits, VA benefits, Federal Railroad retirement benefits, Federal Railroad unemployment and sickness benefits, Civil Service Retirement System benefits and Federal Employee Retirement System benefits. See 75 FR 20299. The Agencies received 586 comments on the proposed rule, including comments from individuals, consumer advocacy organizations, legal services organizations, financial institutions and their trade associations, State attorneys general and State child support enforcement agencies. As described in Parts II and III of this **SUPPLEMENTARY INFORMATION**, the interim final rule adopts the proposal with a number of changes.

Social Security benefits, SSI benefits, VA benefits, Federal Railroad retirement benefits, Federal Railroad unemployment and sickness benefits, Civil Service Retirement System benefits and Federal Employee Retirement System benefits are protected under Federal law from garnishment and the claims of judgment creditors.[1] This legal protection continues after benefits are deposited to an individual's account at a financial institution. Nevertheless, creditors and debt collectors are often able to obtain court orders garnishing funds in an individual's account. To comply with court garnishment orders and preserve funds subject to the orders, financial

[1] *See* 42 U.S.C. 407(a); 42 U.S.C. 1383(d)(1); 38 U.S.C. 5301(a); 45 U.S.C. 231m(a); 45 U.S.C. 352(e); 5 U.S.C. 8346(a) and 5 U.S.C. 8470.

institutions often place a temporary freeze on an account upon receipt of a garnishment order and remit the garnished funds to the court or creditor. Although State laws provide account owners with an opportunity to assert any rights, exemptions, and challenges to the garnishment order, including the exemptions under applicable Federal benefits laws, the freezing of funds during the time it takes to file and adjudicate such a claim can cause significant hardship for account owners.

Proposed Rule

To address the foregoing problems, the Agencies published for comment a proposed rule to require financial institutions to follow certain procedures upon receipt of a garnishment order, as follows: Upon receipt of a garnishment order, a financial institution would first determine if the United States is the plaintiff that obtained the order. If not, the financial institution would review the account history during the 60-day period that precedes the receipt of the garnishment order. If, during this "lookback period," one or more exempt payments were directly deposited to the account, the financial institution would allow the account holder to have access to an amount equal to the lesser of the sum of such exempt payments or the balance of the account on the date of the account review (the "protected amount"). The financial institution would be required to notify the account holder of the protections from garnishment that apply to exempt funds. The notice, which would have to include certain information, would be required to be sent within two business days of the completion of the account review. Financial institutions could choose to use a model notice contained in the rule in order to be deemed to be in compliance with the notice content requirements. Financial institutions that complied with the proposed rule's requirements would be protected from liability.

For an account containing a protected amount, the financial institution would be permitted to collect a garnishment fee only against funds in the account in excess of the protected amount on the date of the account review, and only if the financial institution customarily charges its other account holders a garnishment fee of the same nature and in the same amount. In addition, for accounts containing a protected amount, a financial institution would not be permitted to charge or collect a garnishment fee after the date of account review. The proposed rule would not have required financial institutions to determine the purpose of a garnishment order, including whether the order seeks to collect child support or alimony obligations.

II. Comments and Analysis

In general, individuals, consumer groups, legal aid organizations and State attorneys general were supportive of the proposed rule and urged that it be finalized, subject to a number of changes. Banks and banking industry trade groups generally acknowledged the need for the rule, but were critical of various aspects of the rule and commented that a number of changes should be made to the proposed rule in order to facilitate banks' ability to comply with the requirements of the rule. Many credit unions and several credit union trade associations opposed the proposed rule, and objected to various provisions as time-intensive and burdensome, particularly for smaller credit unions. Several State child support enforcement agencies commented that the proposed rule would harm custodial parents and children receiving child support, and opposed the adoption of the rule unless protection from garnishment for child support obligations is removed.

Effective Date

Many banks and banking industry associations commented that the rule should not become effective until one year following the implementation of the garnishment exemption identifiers that the Treasury will encode in Automated Clearinghouse (ACH) Batch Header Records. The commenters stated that systems programming and testing would be required to automate the detection of the identifiers. The Agencies are not delaying the effective date of the rule until a year after garnishment exemption identifiers have been included in the ACH Records. Although the Agencies understand that many financial institutions will make systems changes to help automate compliance, the Agencies do not consider such changes to be necessary for compliance and do not believe they should be established as a pre-condition to protecting Federal benefits exempt from garnishment by law. However, to provide financial institutions with additional time for staff training and procedural changes, as well as for potential systems changes, we are delaying the effective date until May 1, 2011. Before this date, the Treasury will include the garnishment exemption identifiers in benefit payments and will provide additional information on the identifiers in an update to the Green Book, *A Guide to Federal Government ACH Payments and Collections.*

Scope (Proposed § 212.2)

Some commenters, primarily individuals, noted that the proposed rule did not include within its scope various Federal payments that are protected from garnishment by statute. These commenters urged that the final rule cover all such payments, which include military retirement payments, as well as certain payments made by the Army, Navy, Air Force, Marines, Coast Guard, National Oceanographic and Atmospheric Administration and the Public Health Service.

The Agencies are aware that some other Federal payments are also protected from garnishment and have structured the rule so as to create a framework in which such payments can be included in the future. Federal agencies that issue such payments could, through a public notice-and-comment rulemaking process, amend their regulations to provide that their exempt payments are covered by this rule. The Agencies would then issue a rulemaking to include those payments within the scope of this rule.

Definition of "Account" (Proposed § 212.3)

Some banks and bank trade groups expressed concerns with the broad definition of "account" in the proposed rule, which defined an "account" as "an account at a financial institution to which benefit payments can be delivered by direct deposit." Banks observed that this definition does not distinguish between personal and business accounts, both of which could receive direct deposits of Federal benefits. Banks indicated that the definition raises operational issues, because if an account, such as a business account, is not held in the name of the personal customer or debtor it is not likely to be found during the search of accounts. They therefore recommended that the definition of the term "account" should be expressly limited to "a personal consumer account at a financial institution to which benefit payments can be delivered by direct deposit," a definition that would more closely align with bank record keeping and research systems.

The Agencies are not limiting the definition of account in the rule to an account held for personal, family or household purposes. Although the delivery of a benefit payment to a business account may be relatively uncommon, the Agencies see no reason why the protection afforded to a benefit payment should be contingent on its delivery to a personal account, as opposed to a business account. The

Agencies have refined the definition of account to include any account, whether classified as a master account or a sub account, to which an electronic payment may be directly routed. This clarifies, for example, how the definition would apply to credit union accounting structures where there is a main member number under which there are individual transactional accounts. It also makes the definition more consistent with the provisions of the rule that require financial institutions to conduct a separate account review for each account that may receive a benefit payment.

Definition of "Benefit Payment" and Use of a Garnishment Exemption Identifier (Proposed § 212.3)

Some banks and bank trade groups requested that the definition of "benefit payment" be revised to avoid confusion in circumstances where an individual's benefit payments have been directly deposited to an account held by a representative payee. These commenters suggested that the term benefit payment be defined to mean "a direct deposit payment made by a benefit agency to a natural person, or to a representative payee receiving payments on behalf of a natural person 'whose name appears in the bank's records as account owner,' under a federal program listed in § 212.2(b)." Other banks specifically urged the Agencies to revise the definition of benefit payment in proposed § 212.3 to exclude payments made to organizational representative payees.

Many banks and payment organizations urged that the definition of "benefit payment" be revised to make it clear that a payment constitutes a "benefit payment" only if the ACH Batch Header record contains the unique garnishment exemption identifiers discussed in the proposed rule. These commenters stated that an institution should be able to rely on these unique identifiers, and that this ability be codified in the regulation itself, by amending the definition of "benefit payment" and/or the provisions in § 212.5(a) regarding the account review to be performed by the financial institution. With respect to the proposal to encode an "X" in position 20 of the "Company Name" Field of the Batch Header Record for each exempt benefit ACH payment, many financial institutions noted that encoding an "X" in position 20 can result in the "X" not being readily readable because it is the last character position of that field. They recommended that, instead, an "X" be encoded in the first two positions of the "Company Name" Field—positions 5 and 6—which would make the identifier easier to recognize and would reduce the potential for false positives where a non-Federal agency company name begins with a single letter "X."

One consumer advocacy organization urged that deposits made by check be protected under the same procedures applicable to a "benefit payment," which was defined in the proposed rule to include only a directly deposited payment. The organization argued that a financial institution that has a particular type of account designated for recipients of exempt funds or that notes the exempt source at the time of the deposit should be encouraged not to freeze those exempt funds and should be provided the safe harbor protections under this rule.

The Agencies are revising the definition of "benefit payment," as recommended by the commenters, to make it clear that a payment constitutes a "benefit payment" only if the ACH Batch Header Record contains a specified unique garnishment exemption identifier. The rule provides that a payment constitutes a benefit payment if it contains the characters "XX" encoded in positions 54 and 55 of the "Company Entry Description" Field of the Batch Header Record of the direct deposit entry. While the proposed rule indicated that the garnishment exemption identifier should be in the "Company Name" Field of the Batch Header Record, the interim final rule provides that the identifier will be in the "Company Entry Description" Field to ensure that the identifier can be used with all types of ACH transactions. For example, placing the identifier in the "Company Name" Field would preclude its use with the International ACH Transaction (IAT) Standard Entry Class code, which does not contain the "Company Name" Field. As with the "Company Name" Field, the "Company Entry Description" Field is typically captured and included in an account statement, allowing both the financial institution and the account holder to readily identify Federal benefit payments exempt from garnishment.

With the garnishment exemption identifier in the "Company Entry Description," a Social Security payment that currently contains "SOC SEC" in this field will now be encoded as "XXSOC SEC." A Federal retirement payment currently encoded as "FED ANNUT" will now appear as "XXFED ANN." All benefit payments subject to the interim final rule will be similarly encoded. The encoding of payments will be in place by May 1, 2011.

The comments regarding benefit payments delivered to representative payees have been addressed by changes to the definition of "benefit payment" and the addition of a new defined term, "account holder." The reference to representative payees has been deleted from the definition of "benefit payment," and the new term "account holder" is defined to mean "a natural person against whom a garnishment order is issued and whose name appears in a financial institutions records as direct or beneficial owner of an account." These changes clarify that the protections in the rule apply whenever a person's name appears in the financial institution's records with an ownership interest in an account, either as the directly named owner or as the beneficial owner on an individual or organizational representative payee account, or on another type of fiduciary account.

The scope of the interim final rule does not extend to check payments. Checks do not raise the same concerns raised by the direct deposit of exempt funds because a benefit recipient who receives a Treasury check representing exempt funds can choose to cash the check rather than to deposit the check and take on the risk that the funds will be garnished. In addition, financial institutions cannot readily identify whether a Treasury check that was deposited to an account represents exempt funds. Whereas ACH record formats and systems facilitate both the encoding and recognition of a garnishment exemption identifier with directly deposited payments, the systems and processes used to produce and receive Treasury checks do not facilitate an equivalent approach that would make it possible for financial institutions to determine whether a Treasury check represents an exempt payment. Even if the Agencies could develop a feasible way for an identifier to be included on a Treasury check, a financial institution would need to manually retrieve images or copies of recent items to find Treasury checks and visually inspect them. The fact that the rule does not address Treasury checks in no way affects an individual's right to assert or receive an exemption from garnishment by following the procedures specified under the applicable law.

Definition of "Garnishment" and "Garnishment Order" (Proposed § 212.3)

Several commenters requested clarification on whether pre-judgment garnishments and similar extraordinary legal process are excluded from the scope of the definition of garnishment and the requirements of the rule, stating that the policy considerations behind

emergency and extraordinary legal process are different from those relevant to civil debt collection. One commenter, however, expressed concern that the definition of garnishment order in the proposed rule was too narrow and that it should be revised to include: Any order to freeze an account in anticipation of a further order to enforce a money judgment; any legal process issued as part of a civil proceeding but prior to entry of a money judgment; and any order of a State or local government or agency to freeze or pay funds in connection with an obligation owed to or collected by the State or local government or agency.

The definition of "garnish or garnishment" has been revised to make it clear that pre-judgment garnishments are included within the definition. The proposed definition, which was "execution, levy, attachment, garnishment, or other legal process to enforce a money judgment," has been revised by deleting the phrase "to enforce a money judgment." With the deletion, the definition used in the rule is identical to the definition used in some of the Agencies anti-garnishment statutes.

Definition of Lookback Period (Proposed § 212.3)

Many comments were received regarding the length of the lookback period. Individual benefit recipients and consumer groups generally commented that the 60 day lookback period should be extended, with most commenters suggesting a 65 day period in order to ensure that two months worth of payments are protected in all cases. Several consumer groups and individuals commented that the rule would not protect funds in an account that originated from a large back-payment of benefits, as could occur if a back-payment were credited to an account more than 60 days prior to the receipt of a garnishment order. One consumer advocacy organization urged that the rule require banks to have an informal process in place to evaluate a claim by the debtor that the funds in excess of the two months are also protected under Federal garnishment rules in cases where a judgment creditor seeks more than two months of value of the debtor's protected income. The purpose of this informal process would be to protect beneficiaries with more than two months worth of Federal benefits in their financial institution and alleviate the burden of forcing them to go to court to protect exempt funds.

Credit unions generally commented that, as creditors and potential garnishors, they felt it was inappropriate to shield 60 days of payments from garnishment, and that 30 days protection would be more appropriate. Some banks and credit unions stated that due to the way account history is archived, they could not easily comply with a 60 day lookback requirement and requested that the lookback period be limited to 45 days or one month. Most banks commented that they could comply with a 60 day lookback period, but some banks and bank trade groups commented that a two month lookback period would be easier to administer and less prone to potential errors. Using this two month definition, the lookback period would be measured not by counting back 60 days, but rather by measuring a date-to-date period from a start date, for example September 15, and ending with the corresponding date of the month two months earlier, in this example July 15. In light of the comments, the Agencies have revised the lookback period. The interim final rule defines the lookback period as a two month period beginning on the date preceding the date of the account review. The two month lookback period will ensure that in almost all cases, the protected amount will include two benefit payments, as urged by consumers and consumer advocacy groups. The Agencies conducted research on Federal benefit payments covered by this rule over a 7 year period that showed that a 60 day lookback period will capture at least two payments in 95% of cases, whereas a two month lookback period measured date-to-date will capture at least two payments in 99% of cases. In addition, the two-month lookback period addresses financial institutions' request for a lookback period that is easier to administer and less error-prone.

Moreover, in the proposed rule the lookback period began on the date preceding the date on which a financial institution is served a garnishment order. In the interim final rule, the lookback period begins on the date preceding the date of account review. This change reflects that the interim final rule allows two business days, and potentially additional time, to perform the account review after receipt of a garnishment order. By linking the lookback period to the date of account review and not the date an order is served, the rule ensures that the account review will better reflect the current state of an account and capture the most recent benefit payments that may be deposited on or after the day an order is served but before the account review is performed.

Definition of "Protected Amount" (Proposed § 212.3)

One bank questioned whether the "balance on the day of the account review" used in defining the protected amount refers to the beginning balance or ending balance on that day, and recommended that the rule be clarified by stating that financial institutions are to look at the beginning account balance. Another commenter asked whether items presented for payment against the debtor's account that arrive the same day as the garnishment are included in the protected amount and asked that the rule provide explicit guidance on whether the protected amount is calculated based on the account balance prior to or after posting of the debits or credits received on the same day as the garnishment.

Some commenters urged the Agencies to define the protected amount as an aggregate across accounts, rather than applying a protected amount to each account separately. Under this proposed definition, the protected amount would be the lesser of (i) the sum of all benefit payments deposited "into all accounts owned by the account holder" during the lookback period or (ii) the "aggregate balance in these accounts" on the date of account review.

Some commenters, including financial institutions, trade groups, and consumer advocacy groups, stated that protecting a flat dollar amount would promote certainty, clarity and administrative simplicity.

The interim final rule refers specifically to beginning and ending balances in the definition of protected amount. Under the revised definition, items presented for payment against the account that arrive on the same day as the date of account review would not be included in the protected amount. The Agencies are not defining a flat dollar amount as the protected amount because the use of a flat dollar amount will invariably result in underprotecting some individuals and overprotecting others.

The Agencies are not defining the protected amount based on the aggregate deposits and balances across all accounts, for several reasons. First, the Agencies believe the protection should be specific to the account(s) to which benefit payments are directly deposited, ensuring that a direct, verifiable connection exists between the protected amount and the evidence of an exempt Federal benefit payment. Second, defining the protected amount as an aggregate across all accounts assumes that amounts transferred between accounts must be exempt. As discussed

more fully in this preamble under the heading "Protection for funds transferred to another account (§ 212.5)," however, the Agencies do not believe the account review and the establishment of the protected amount can apply to funds transferred from one account to another. Third, an aggregated protected amount would introduce additional accounting complexities in different deposit and balance scenarios. For example, if the sum of benefit payments is less than the combined balance across accounts, but more than the balance in any individual account, the protected amount could cover only partial amounts in one or more accounts and would require a rule for allocating the protected amount across accounts.

The interim final rule retains the subsection in the proposed rule that makes clear that a protected amount must be established separately for each account held in the name of the account holder.

U.S. Garnishment Orders (Proposed § 212.4)

Many commenters objected to excluding garnishment orders obtained by the United States from the protections of the rule. Legal aid organizations, consumer advocacy groups and individuals stated that these orders should not be excluded because doing so contradicts the goal of ensuring that beneficiaries retain their exempt benefits, and that no specific creditor should be treated differently from others. Financial institutions stated that the requirement in the proposed rule to treat garnishment orders where the United States is the garnishor differently from other garnishment orders adds an undesirable level of complexity to the garnishment process and raises compliance concerns. Some financial institutions expressed concerns that it may be difficult to determine whether the United States is the creditor is some cases.

Financial institutions and financial institution trade groups requested that if the requirement to exclude orders obtained by the United States is retained, the final rule require that each order issued by the United States state on its face—preferably on the first page—that it is exempt from the requirements of 31 CFR 212.5 and 212.6. Financial institutions argued that such a statement would provide certainty and allow for rapid decision-making and handling by the financial institution. Alternatively, financial institutions requested that each order issued by the United States be accompanied by a Notice of Garnishment as set forth in Appendix B of the rule so as to ensure that the initial examination is handled quickly and accurately.

Financial institutions also requested confirmation that non-garnishment forms of legal seizure issued by the United States are also excluded from the review/protection process. They explained that the term "garnishment" typically encompasses the orders used in the judicial collection of a civil money judgment, and indicated that they handle many non-garnishment legal orders that freeze customer funds on a continuing basis, such as temporary restraining orders, injunctions and seizure warrants. They recommended that all legal process issued by the United States be treated the same way, and be specifically excluded from the requirements of proposed §§ 212.5 and 212.6.

One commenter suggested that the rule be modified to require a financial institution receiving a garnishment order from the Federal government to screen the account for any of the types of benefits that are not exempt from collection by the Federal government. This commenter recommended the creation and use of a separate code for those Federal benefits that are not exempt from collection when the creditor is the Federal government, and that financial institutions be required to screen for this factor.

The Agencies are retaining in the rule an exclusion for garnishment orders obtained by the United States. There are several Federal statutes that expressly permit the United States to garnish Federal benefit payments. See 18 U.S.C. 3613(a), 26 U.S.C. 6334(c), 31 U.S.C. 3716(c)(3)(A)(i), and 42 U.S.C. 1320a–8(e)(1)(C). Absent a carve-out for all garnishment orders obtained by the United States, financial institutions would face uncertainty and the burden of determining on a case-by-case basis whether a particular order obtained by the United States was subject to the rule or not. Moreover, garnishments orders obtained by the United States are already governed by a comprehensive Federal statute, the Federal Debt Collection Procedures Act (FDCPA), 28 U.S.C. 3001 *et seq.*, which establishes a uniform framework with exclusive civil procedures for the collection of all judgments due the United States, including cases where the United States is prohibited from garnishing Federal benefit payments as well as cases where it is expressly allowed to garnish such payments. While the rule is needed to address the problems of garnishing exempt funds, it would both overlap and conflict with the framework of the FDCPA unless garnishment orders obtained by the United States are excluded.

In order to allow financial institutions to quickly identify whether a garnishment order was obtained by the United States, the rule requires that such orders have attached or included with them a standard Notice of Right to Garnish Federal Benefits.

Child Support Orders (Proposed § 212.4)

Several State child support enforcement agencies argued that garnishment orders for purposes of child support should be treated in § 212.4 in the same way as orders obtained by the United States. These agencies expressed concerns regarding the legality and equity of protecting benefit payments from garnishment for child support. State child support agencies pointed out that Federal law and administrative regulation not only allow but encourage child support enforcement programs to take enforcement action against most funds identified as "protected" in the proposed rule in order to satisfy court ordered support requirements. They noted that an obligation to support children and family is not characteristically similar to other debts and that child support obligations are not treated like other debts in contexts of many Federal statutes, such as the Bankruptcy Code, the Fair Debt Collections Practices Act, and the Consumer Credit Protection Act.

State child support enforcement agencies also pointed out that while SSA benefit programs participate with the Federal Office of Child Support Enforcement (OCSE) in data matching programs that allow child support programs to collect child support from Social Security Title II benefits, this is not the case for VA programs. There is no proactive matching that provides viable useful information on VA benefits, and there is not an effective program that efficiently allows for collection of child support from any VA benefits.

Child support enforcement agencies argued that the proposed rule would diminish their powers in direct contravention of the rights and responsibilities assigned to the child support enforcement program by Federal law and regulation. In view of these concerns, commenters requested that a provision be added to the rule to require a financial institution to make a determination if an order was issued by a Child Support program under Title IV–D of the Social Security Act, in the same way that financial institutions are required to make as to whether a garnishment order was obtained by the United States. These agencies argued

that an exemption for child support orders would be consistent with the clear Congressional intent to require all persons to support their families. Commenters argued that such an exemption would not be burdensome for financial institutions to comply with because child support garnishment orders are distinctive and easily identifiable by financial institutions.

The interim final rule contains an exclusion for garnishment orders issued by a State child support enforcement agency that administers a child support program under Title IV–D of the Social Security Act. These orders are treated in the same way as orders obtained by the United States. Under the rule, a financial institution must determine whether an order was obtained by the United States or issued by a State child support enforcement agency. In making this determination, a financial institution may rely on the presence of a Notice of Right to Garnish Federal Benefits, which must be attached or included with the order. If the notice is present, a financial institution is not required to perform an account review or take actions otherwise required by the rule. Rather, the financial institution follows its customary procedures for garnishment orders and treats the relevant account(s) as if no Federal benefit payment were present. However, the Agencies note that this exclusion does not alter an individual's right to assert any protections for benefit funds that may exist under applicable Federal law.

Deadline for Account Review (Proposed § 212.5(a))

Most of the banks and bank trade groups that commented on the proposed rule stated that the requirement to perform an account review within one business day of receipt of a garnishment order is unrealistic. Commenters stated that garnishment orders can be delivered to any bank location and may not reach the designated processing department until after one day from "receipt." They also pointed out that sometimes States bundle together large numbers of garnishment orders and deliver them in a batch. Financial institutions requested that the final rule recognize the delivery of bundled/batches of large numbers of garnishments delivered in one shipment and permit financial institutions to commence the account review (and accordingly, the lookback period) as permitted by the creditor. Financial institutions argued that they should be allowed leeway in this regard as it may be impossible to meet the one day review requirement.

Some commenters, primarily credit unions, asked that the deadline be increased to a period ranging from two to five business days following receipt of the order. Other commenters, primarily banks, asked that the obligation to commence review begin only after the institution receives the information necessary to identify the property of the benefit recipient. Some commenters asked for a combination: the longer of two business days or the receipt of the information necessary to identify the property of the benefit recipient.

A number of commenters suggested that the phrase "a garnishment order issued against an account" in proposed § 212.5(a) be rewritten to refer to "a garnishment order against a natural person." These commenters pointed out that a garnishment order must be directed against an individual rather than a deposit account, as a garnishment order is directed against a judgment debtor and his or her property, and rarely against a deposit account. Commenters indicated that this definition would be more accurate and also avoid capturing garnishment orders directed against organizations.

The Agencies have extended the account review deadline from one business day to two business days. To address situations in which a financial institution receives a garnishment order that does not include sufficient information to identify whether the debtor is an account holder, the rule provides that in such a case the two business day deadline commences when the financial institution receives sufficient information to determine whether the debtor is an account holder. Based on comments submitted by a variety of financial institutions, the Agencies understand that when a financial institution receives a garnishment order with insufficient information to identify the debtor, it notifies the creditor or court that additional information is needed and and can take no action on the order until it receives such information. The rule does not affect this status quo process, and recognizes that action on an order, including the account review, can't begin until the debtor is identified as an account holder.

In cases where a financial institution is served a batch of a large number of orders at the same time, the interim final rule extends the account review deadline to a date that may be permitted by the creditor that initiated the orders.

Finally, the language in the interim final rule has been revised to reflect that garnishment orders are issued against debtors rather than accounts.

Protection for Funds Transferred to Another Account (Proposed § 212.5)

Financial institutions broadly supported the proposal to exclude funds transferred to another account from the rule's protection, and requested that § 212.5 explicitly state that transferred funds are not subject to protection.

One consumer advocacy organization commented that exempt money that is transferred from one account to another should be protected under the rule. This organization commented that to preserve economic security, elders and younger adults living with disabilities are generally counseled to transfer incoming income into a safe savings account. The organization argued that transferring exempt money into a secondary account should not be seen as forfeiting the protection available for exempt funds and that, at the very least, beneficiaries should be notified by the financial institution before transferred funds are released under the garnishment order and allowed the opportunity to show the institution that the transferred funds are exempt Federal funds and therefore protected under the rule.

The Agencies have revised § 212.5 to state explicitly that funds transferred from one account to another are excluded from the account review and the establishment of the protected amount. Although the Agencies understand that exempt funds may be transferred to a savings or other secondary account following the initial deposit, it is not clear that transferred funds necessarily retain their exempt character in all cases, and, unlike a direct deposit payment, that transfer transactions will be readily identifiable as containing exempt funds.

If the source account from which funds are transferred contains other deposits of non-exempt funds or withdrawals of exempt funds, or if the receiving account contains other credits or debits following the transfer of funds, there is no clear way to distinguish balances transferred into the receiving account as exempt. While the Agencies might develop a standard accounting convention to label and trace originally exempt funds transferred over time, doing so would likely generate inaccurate or inappropriate results given the uniqueness of transactions in a given case, and given the attenuated connection that may exist between the original deposit and subsequent transfer. Moreover, requiring the examination of all account transfers after a Federal benefit payment has been identified would impose a significant burden on financial institutions, since

they would not be able to rely on a transaction indicator, like the ACH identifier, in searching account histories to determine whether transferred funds should be classified as exempt.

While the interim final rule states that financial institutions should not attempt to trace the movement of funds between accounts in establishing a protected amount, the Agencies recognize that exempt funds may be transferred and note that nothing in the rule limits an individual's right to assert a further exemption for additional funds or to alter the exempt status of transferred funds that may be identifiable and traceable when the facts of a given case are reviewed.

Access to Protected Amount by Account Holder (Proposed § 212.6(a))

Consumer groups commented that the rule should make it clear that an account holder has "full, unfettered and customary" access to the protected amount, to prevent banks from improperly providing only limited access to account holders. One commenter urged that language be added to preclude any attempts by creditors to subsequently litigate whether the "protected amount" actually consists of exempt funds.

The rule has been revised to state that a financial institution must ensure that the account holder has "full and customary" access to the protected amount. The Agencies intend by this language to ensure that after a garnishment order is received, the account holder continues to have the same degree of access to the protected funds that was provided prior to the receipt of the order. Additional language also has been added to make it clear that a financial institution's calculation of the protected amount is not subject to a legal action by a creditor challenging that determination.

One-Time Account Review (Proposed § 212.6(d))

One bank requested clarification on the requirement in proposed § 212.6(d) to determine whether a garnishment order that is received was previously served on the bank. The bank commented that financial institutions often receive multiple orders from the same creditor for the same account holder, and that it is difficult to determine whether the receipt of a second order would be considered the same order, which would not require another account review; or a new or different order, which would require a new account review. The Agencies are not addressing in the final rule what process financial institutions should use to determine whether a garnishment order is a new order or an order that was previously received, as this is necessarily a fact-specific determination.

Continuing Garnishment Responsibilities (Proposed § 212.6(e))

One commenter requested that the language of proposed § 212.6(e) be revised. That section provides that a financial institution "shall have no continuing obligation to garnish" amounts deposited or credited to the account following the account review. The commenter observed that this wording would allow a financial institution to decide whether to comply with the terms of a continuing garnishment order, rather than prohibiting a financial institution from complying with the terms of a continuing garnishment order. The interim final rule has been revised to make it clear that a financial institution is not permitted to give effect to a continuing garnishment order affecting an account containing a protected amount.

Deduction of Garnishment Fees (Proposed § 212.6(f), (g))

Many comments were received on the provisions in the proposed rule regarding the imposition of garnishment fees by financial institutions. Consumer advocacy groups opposed the language in the proposed rule at § 212.6(f) that affirms the ability of a financial institution to charge a customary garnishment fee if the account contains an unprotected amount. They argued that if a garnishment fee is prohibited on exempt amounts, it should be prohibited regardless of whether the exempt funds fall into the artificially narrow scope of the protected amount. They commented that proposed § 212.6(f) should be deleted because it may provide support for the imposition of excessive fees. Consumer advocacy groups further urged that the definition of "garnishment fee" be amended to include not only a fee for imposing the garnishment, but rather any fee that arises as a result of a garnishment.

Financial institutions, on the other hand, strongly objected to restricting the collection of a garnishment fee to cases in which there are funds in the account in excess of the protected amount. They challenged the legality of the restriction and argued that it is unfair both to the financial institution and to other account holders, to whom the costs for administering these accounts will be transferred. Some financial institutions commented that this restriction may lead them to close accounts that contain benefit payments if a garnishment order is received.

Some financial institutions argued that the provisions of the rule on garnishment fees exceed the Agencies' statutory authority, stating that none of the statutes cited as authority for the regulation allow the Agencies to limit or prohibit any fee a financial institution charges for any service based on the source of funds in the account. One financial institution argued that the prohibition may amount to an unlawful taking, running afoul of the Fifth Amendment to the United States Constitution. Another financial institution commented that the proposed rule contravenes a bank's legal right to take a security interest in its deposit accounts and its common law right of offset. Many financial institutions argued that the imposition of garnishment fees is a matter of contract between financial institutions and their customer, and that customers agree to pay for fees and charges with the maintenance of their deposit accounts.

Banks also opposed the garnishment fee restrictions as a matter of policy and equity. Some banks commented that they did not understand the distinction drawn by the Agencies between a garnishment fee and other fees and charges incurred by a customer. Many financial institutions commented that they incur significant costs in processing garnishment orders, and that garnishment fees should be permitted whether or not an account has excess funds beyond any protected amounts. Financial institutions also argued that there is no principled reason why benefit recipients should be allowed to contract or pay for needed banking services but be legally shielded from a garnishment fee. Some financial institutions went further and argued that in fairness to customers who do not receive Federal benefit payments, a separate garnishment fee should be allowable for those accounts with Federal benefit payments to help defray the extra costs to the bank imposed by this regulation and to recognize benefit received by the customer from the protections of this rule.

Financial institutions also opposed the proposed restriction to permit assessing the fee only on the date of account review. One bank indicated that it saw no purpose in mandating the date on which the fee may be assessed and that if banks are afforded only a single, specific date to assess the garnishment processing fee, they may automatically elect to assess this fee without regard to whether the fee may be waived in certain instances.

Other financial institutions indicated that if they could not recoup their costs for processing garnishment orders, there would be little incentive to allow the account to remain open. Rather than incur the risk of future garnishment expenses, some financial institutions indicated that they might choose to close accounts for this population. Commenters noted that Federal benefit payment accounts are often small-balance, labor intensive accounts that can be unprofitable for banks to maintain, and that limitations in the proposed rules on the ability of banks to recover their costs for handling garnishments exacerbate this situation.

Some legal aid organizations and consumer advocacy groups appeared to anticipate that financial institutions might respond to the rule by closing accounts held by benefit recipients if the accounts are garnished. These organizations indicated that this practice already occurs in some instances. Specifically, in some cases banks that receive a garnishment order for an account containing only exempt funds send the account holder a check for the exempt funds and close the account. Legal aid organizations requested that the final rule prohibit this practice, which causes hardship for benefit recipients.

The interim final rule prohibits financial institutions from charging a garnishment fee against a protected amount, and also prohibits the charging of a garnishment fee after the date of the account review. The Agencies believe that the anti-garnishment statutes support a prohibition against the imposition of a garnishment fee if the account contains only a protected amount. Some cases have held that financial institutions may charge account-related fees against protected funds in an account, and that the charging of the fees does not constitute garnishment or other legal process. For example, courts have upheld a bank's right to charge overdraft fees from Social Security and Supplemental Security Income funds deposited to a bank account. See *Lopez* v. *Washington Mutual Bank,* 2002 U.S. App. LEXIS 24344; see also *Wilson* v. *Harris,* 2007 U.S. Dist. LEXIS 65345. The Agencies view garnishment processing fees as distinct from other account-related fees. If funds in an account are protected from garnishment, the Agencies find it unreasonable to conclude that those same funds can be subjected to a fee for handling a garnishment order—an order that itself cannot legally be processed against the funds.

The rule prohibits a financial institution from charging a garnishment fee after the date of account review because otherwise the rule would need to prescribe procedures that financial institutions would follow to monitor accounts in real time to track deposits and withdrawals, determine whether new deposits are exempt or not, and determine whether a garnishment fee could be imposed. The Agencies believe that such an approach would be complex, confusing for account holders and at odds with the one-time review process established under the rule. Accordingly, the rule restricts the timing of garnishment fees.

The Agencies do not believe that the anti-garnishment statutes support a general prohibition on imposing a garnishment fee against non-protected funds. In addition, the Agencies are not expanding the prohibition on garnishment fees to apply to "any fee that arises as a result of a garnishment," because such a definition would be overly broad. The Agencies are not in this rulemaking addressing a financial institution's right to take a security interest in its deposit accounts or to exercise a contractual right to deduct fees or a common law right of offset against funds that are exempt from garnishment, except in the very narrow context of deducting a garnishment processing fee from an account containing a protected amount following receipt of a garnishment order.

The interim final rule requires financial institutions to ensure that account holders have full and customary access to protected amounts. The rule does not address the conditions under which financial institutions may close accounts, which the Agencies believe is beyond the ambit of this rule.

No Actions After the Date of Account Review (Proposed § 212.6)

The proposed rule was based on the principle that a financial institution's response to a garnishment order must be a one-time event, based on the status of an account on the date of account review, and it prohibited financial institutions from taking any action on the account in response to the garnishment order after the date of account review. The interim final rule adopts this principle, which applies to all actions that a financial institution may perform on an account, including examining deposits, freezing funds, protecting funds, and collecting garnishment fees. Accordingly, § 212.6(f) of the interim final rule provides that a financial institution must perform the account review only one time and may not repeat the review subsequently, including in cases where the same garnishment order is served again on the financial institution. Similarly, § 212.6(g) preempts State laws requiring continuing garnishments and prohibits a financial institution from freezing funds deposited after the one-time account review. Likewise, § 212.6(h) provides that a financial institution may not collect a garnishment fee from unprotected funds after the date of account review.

The Agencies have necessarily established these provisions to give proper effect to the anti-garnishment statutes, since it is not feasible to implement both a protected amount and to permit continuing actions related to the garnishment order. Because the status of an account will change with every transaction following the account review, requiring both protection for exempt funds and permitting other subsequent actions would necessitate the monitoring of transactions in real time to continually re-assess the account balance and determine which funds are exempt and which are not exempt from garnishment. As was discussed in the supplementary information to the proposed rule, the Agencies believe that any policies that would necessitate the on-going monitoring of transactions would be neither operationally nor economically feasible. Therefore, the rule does not permit actions related to a garnishment order after the date of account review, and requires all permissible actions to be based on the balance in the account derived from transactions occurring at or before the open of business on the date of account review.

Financial Institution Right of Offset (Proposed § 212.8)

Consumer advocacy groups urged the Agencies to delete the language in § 212.8(b) of the proposed rule stating that nothing in the rule shall be construed to invalidate any term or condition of an account agreement that is not inconsistent with the rule, on the basis that this provision tacitly supports setoffs from exempt funds. Consumer groups noted that the proposed rule is silent as to overdraft charges and other setoffs against exempt funds. These commenters supported prohibiting setoffs against exempt funds for all types of fees, arguing that there are some cases that have held it is not legal for financial institutions to seize exempt funds. Alternatively, they requested that the Agencies clarify that this provision should not be construed to validate account agreements that permit the seizure of exempt funds through setoff or any other means.

In contrast, some financial institutions commented that it is important that their existing rights of setoff be protected. Credit unions commented that currently there are two different mechanisms credit unions can employ in order to use members' funds on deposit to satisfy outstanding debts to the credit union. First, credit unions may create a contractual lien during the account opening and lending process that provides the credit union the right to use shares on deposit in the event an account holder becomes delinquent on a loan issued by the credit union. Additionally, the Federal Credit Union Act (FCUA) provides credit unions the statutory right to enforce a lien against a member's shares if the member is delinquent on a loan issued by the credit union. *See* 12 U.S.C. 1757(11). In order to take advantage of the statutory lien, a credit union must comply with 12 CFR 701.39 of the National Credit Union Administration's (NCUA) rules and regulations.

The proposed rule did not address, nor did the Agencies intend to address, the right of financial institutions to set off obligations of an account holder against an account to which Federal benefit payments have been deposited. The rule is intended to protect account holders who receive directly deposited benefit payments from difficulties that may arise when a garnishment order against an account holder is served on a financial institution. Accordingly, the issue of setoff by financial institutions is outside the scope of the interim final rule.

Notice (Proposed § 212.6(c), § 212.7, Appendix A)

Comments on the required notice to account holders were received from a broad array of commenters. The most frequent comment, which was received from all types of commenters, was that the model notice needs to be rewritten to be more easily understandable, and that the Agencies should have the notice revised by a literacy expert and tested. In addition, financial institutions commented broadly on a wide range of other issues relating to the notice. Many financial institutions objected to the requirement to send any notice, observing that this is outside the scope of a financial institution's responsibilities with respect to its customers, imposes considerable costs burdens on financial institutions, and likely will result in follow-up telephone calls which add to customer service burdens. Commenters argued that debtors who have protected Federal benefits deposited to their accounts will receive two notices from two different sources which is likely to generate additional confusion. Some commenters suggested that the rule provide, at least in the jurisdictions in which the creditor is required to send garnishment information to the debtor, that the creditor be required also to send a notice regarding Federal benefit payments to the debtor. Two State child support enforcement agencies objected to the requirement that any notice be sent, on the basis that the notice would lead to the withdrawal of funds and create the false impression that funds are protected from child support enforcement action.

Many financial institutions also commented on specific aspects of the notice and notice requirement. Some financial institutions asked for longer periods of time ranging from 3 to 7 days to send the notice in light of the burden it imposes. One commenter noted that § 212.7 of the proposed rule does not indicate who is to receive the notice in cases where the account in question is held in the names of two or more persons, and recommended that in the case of multiple account holders, notice to any of the account holders should be sufficient, regardless of who is ultimately required to receive the notice. Some banks commented that if a customer has more than one account at a bank, the bank should have the option of sending one notice for all accounts or separate notices for each account. They stated that this would provide flexibility to design bank processes in the manner the bank deems most efficient while ensuring that the customer receives the information he or she needs.

Financial institution trade groups recommended that the notice requirement not apply in situations where a financial institution finds when it conducts the account review that the account reflects an overdraft or zero balance, or where there are no funds in the customer's account that exceed the protected amount. They expressed substantial concerns that the requirement to provide notice in these cases would unnecessarily confuse the account holder, and that customers receiving this notice are likely to call the bank for an explanation, requiring additional resources to handle calls. They also indicated that requiring notice in these cases would be a significant burden for financial institutions. One bank estimated that approximately 60% of the orders it receives would involve accounts where no funds were frozen, either because there are no funds in the account or because the funds that are present are fully exempt.

Some financial institutions commented that the list of benefits required under § 212.7(a)(7) of the proposed rule to be included in the notice is confusing and misleading, both because account holders may construe it to mean that the funds should not have been held and because in many States these funds are not exempt once deposited in a bank account. Commenters requested that this requirement be amended to state simply that Federal or State law may provide additional exemptions and that comparable changes be made to the model form.

A number of financial institutions requested the removal or revision of the requirement at § 212.7(a)(8) of the proposed rule that the notice explain the account holder's right to assert a further garnishment exemption for amounts above the protected amount by completing exemption claims forms. They argued that this requirement imposes a considerable burden on the financial institution to keep apprised of the process for claiming exemptions in each jurisdiction and to provide a description of the process in the notice to the account holder, particularly for an institution with a presence in a large number of States. Some financial institutions argued that this provision goes beyond the stated purpose of the regulation, because in most cases the relevant exemptions would be under State law, which is not within the scope of the Federal garnishment laws. One large bank expressed concern that by providing guidance on the statutory processes, a bank risks creating the perception that it is providing legal advice. Some commenters urged that the notice simply state that the account holder may have a right to assert a further garnishment exemption for amounts above the protected amount by complying with the processes provided by State law. Other commenters recommended that this provision clarify that such claims are not against a bank that has complied with the proposed rules, so as to avoid potential customer confusion regarding available remedies and next steps he or she should take. Several commenters suggested that the Agencies urge the States to incorporate into State garnishment forms model language on the protection of Federal benefits, stating that uniform adoption of standard language on Federal benefit payments would reduce the potential confusion to account holders.

Some financial institutions requested that § 212.7(a)(9) and (10) of the proposed rule be revised to state that the notice include the means of contacting the judgment creditor and court only if

that information is contained in the garnishment order served on the financial institution.

In contrast to financial institutions, consumer advocacy and legal aid organizations commented that the notice is important in ensuring that account holders are informed of the receipt of a garnishment order and aware of their rights in relation to it. One consumer advocacy group proposed that for those consumers that do in fact have their accounts garnished, notice be required to be given by either registered mail or personally served to ensure that the consumer actually receives notice of the garnishment. Several legal services organizations commented that the model notice should advise the debtor of his right to consult an attorney and include information on the availability of free legal aid attorneys.

Consumer advocacy groups recommended that the notice specify exactly how much money the bank has frozen and the name and number of the account in which these funds are found. They also recommended that the notice specify the amount of any garnishment fee the bank has assessed against the recipient's account. Other recommendations included (1) the notice should state that future funds deposited in the account will not be subject to seizure as the result of this garnishment order; (2) the notice needs to include information about local, free legal programs; and (3) the regulation itself should reference and specifically recommend the use of the model notice with blanks to be filled in for State-specific information.

As indicated above, both consumer advocacy organizations and financial institution trade groups criticized the complexity of the wording of the proposed model notice, noting that it uses complex language, compound sentences, and long paragraphs. Many commenters submitted proposed revisions to the wording to improve its readability. In general, commenters encouraged the Agencies to consider testing provisional form(s) with consumer focus groups directly or through voluntary financial institutions; to strike references to creditor and court contact information; and to rewrite the notice at more basic literacy standards, not to exceed an 8th grade reading level.

An organization representing collection attorneys requested that the final rule require financial institutions to provide notice not only to the account holder but also to the judgment creditor. They argued that since the rule does not require notice to the judgment creditor/garnishor, it violates the creditor's constitutional rights to notice that its State law rights are preempted. They contended that such a result is patently unfair to judgment creditors/garnishors that have a right to know the particulars as to why a financial institution did not freeze certain funds otherwise subject to collection under State law.

The interim final rule contains a number of changes to the notice provisions and to the model notice itself, reflecting the comments received. The amount of time required to issue the notice has been increased from two business days to three business days from the date of account review. The Agencies believe that the notice should be sent to the account holder named in the garnishment order, and not to a co-owner of an affected account, and have revised the rule accordingly. The Agencies agree with comments made by consumer advocacy organizations that the notice should identify the account affected by the order and specify exactly how much money the financial institution has frozen, if any, as well as the amount of any garnishment fee assessed. The Agencies do not believe that notice should be required to be sent by registered mail or personally served on the account holder. The Agencies do not believe it serves a useful purpose, and agree that it may be confusing to an account holder, for a notice to be sent in situations where a financial institution finds when it conducts the account review that the account reflects an overdraft or zero balance. In contrast, however, the Agencies do not agree that a notice should not be required where there are no funds in the customer's account that exceed the protected amount. Therefore, the interim final rule requires notice to the account holder if the financial institution's account review results in the establishment of a protected amount.

In the interim final rule, the Agencies have attempted to strike a balance between ensuring that account holders receive useful, relevant information and avoiding the complexity and confusion that a lengthy notice could create. The Agencies are also cognizant of the concerns expressed by financial institutions that the provision of certain information may be unduly burdensome and could create the impression that the financial institution is providing legal advice or acting as an intermediary between the debtor and the court or creditor. Accordingly, the interim final rule allows, but does not require, financial institutions to include: Additional information regarding State or local rules; the availability of legal resources that account holders might wish to consult; and a statement that by issuing the notice, the financial institution is not providing legal advice. In addition, the rule has been revised to state that in providing the notice, a financial institution shall not be deemed to be providing legal advice to the account holder. The requirement that financial institutions provide the means of contacting the creditor and court has been qualified to make it clear those requirements apply only if the order includes that information. Lastly, the Agencies are not including a requirement in the rule to send a copy of the notice to the creditor. The Agencies believe it is inappropriate for the financial institution to bear the cost of notification to a creditor since the financial institution has no relationship with the creditor, in contrast to the account holder.

Finally, the Agencies have revised the model notice in the interim final rule to improve its readability based on input from financial education and literacy professionals. The organization of the model notice has been changed to a question-and-answer format with a chart showing the status of the benefit recipient's account, and the language has been re-written to reflect more basic literary standards and comprehension levels.

Preemption of State law (Proposed § 212.9)

Some financial institutions expressed confusion over the interplay of the rule with State law and questioned how the preemption of State law would work in certain situations. These commenters urged the Agencies not to preempt greater protections that States provide with respect to garnishment of bank accounts and asked that the final rule explicitly state that it does not preempt State laws that are at least as protective to account holders as Federal law.

The interim final rule preempts any State or local government law that is inconsistent with any provision of the rule. Such a preemption occurs only to the extent that an inconsistency between the rule and State law would prevent a financial institution from complying with the requirements of the rule. Some State laws, for example, may protect from garnishment funds in a bank account in an amount that exceeds the protected amount. The interim final rule does not displace or supersede such a State law requirement, provided that the financial institution has complied with all of the requirements of the interim final rule.

Safe Harbor (Proposed § 212.10)

Some commenters stated that proposed § 212.10(c)(3), which allows for the account holder to provide express written instructions to use an otherwise protected amount to satisfy the garnishment holder, raises concerns. These commenters recommended that proposed § 212.10(c)(3) be removed from the regulation because, although the instructions need to be received by the bank after the date of the garnishment, there is nothing to prevent a creditor from forcing a recipient to sign such instructions in advance. If this section remains in the rule, these commenters recommended that language be added that such instructions cannot be a result of a prior agreement.

Many banks commented that the Agencies should expressly extend the safe harbor provisions to instances where financial institutions are unable to comply with the requirement to perform an account review within one business day due to the need to obtain additional information or to handle the exceptional circumstances. Some financial institutions asked that the safe harbor be pushed back to the point where the financial institution relies on the ACH record to identify a benefit payment, stating that the safe harbor should clarify that when the institution relies on such record, the payment should be deemed to be a benefit payment. Some commenters urged the Agencies to strike the requirement of good faith compliance from proposed § 212.10 as a condition to the safe harbor because this creates a triable issue of fact before the safe harbor is available. Other commenters suggested that the safe harbor be expanded to protect a financial institution from liability in cases where the financial institution, after a review of its own records, releases to the account holder benefit payments as defined by the rule.

The Agencies have revised the language of the proposed rule to make it clear that an account holder may not instruct a financial institution in advance or in a standing agreement to use exempt funds to satisfy a garnishment order. Apart from this change and other minor technical revisions, the Agencies do not believe any change to the safe harbor language is necessary. Changes to the deadline for performing the account review adequately address the concern that the safe harbor should cover financial institutions that are unable to comply with the requirement to perform an account review within one business day due to the need to obtain additional information or to handle the exceptional circumstances. Similarly, because the definition of "benefit payment" has been revised to refer to payments in which the ACH identifier is present, it is clear that a financial institution that relies on the ACH record would be covered by the safe harbor. The Agencies are retaining the good faith requirement as a condition for the availability of the safe harbor. In addition, the Agencies do not believe it is appropriate to protect from liability a financial institution that voluntarily releases funds that fall within the rule's definition of "benefit payments." This could result in the release of months' or years' worth of benefit payments, without regard to withdrawals, account activity or the extent to which funds in the account retain the characterization of exempt payments.

Enforcement and Record Retention (Proposed § 212.11)

Some consumer groups commented that they had significant concerns regarding lack of enforcement of the proposed rule. These commenters noted that while the Federal banking agencies have the right to enforce the proposed rule, they are often overwhelmed and lack the resources to address all of the abuses in the banking system. They recommended that the rule include a private right of action so consumers themselves can force financial institutions to comply with the new rules.

Many banks noted that although the proposed rule required that records be maintained to demonstrate compliance with the rule, the proposed rule did not specify a time period for the requirement to maintain records. Most banks that commented on this issue recommended that a time period of one year following the account review be stipulated.

Congress did not provide a private right of action in the statutes prohibiting garnishment of Federal benefits and therefore the interim final rule does not include such a provision. The Agencies have specified a two-year record retention period in the rule.

III. Summary of Interim Final Rule

Under the rule, a financial institution that receives a garnishment order must first determine if the United States or a State child support enforcement agency is the plaintiff that obtained the order. If so, the financial institution follows its customary procedures for handling the order. If not, the financial institution must review the account history for the prior two-month period to determine whether, during this "lookback period," one or more exempt benefit payments were directly deposited to the account. The financial institution may rely on the presence of certain ACH identifiers to determine whether a payment is an exempt benefit payment for purposes of the rule.

The financial institution must allow the account holder to have access to an amount equal to the lesser of the sum of exempt payments directly deposited to the account during the lookback period or the balance of the account on the date of the account review (the "protected amount"). In addition, the financial institution must notify the account holder that the financial institution has received a garnishment order. The notice must briefly explain what a garnishment is and must also include other information regarding the account holder's rights. There is no requirement to send a notice if the balance in the account is zero or negative on the date of account review. Financial institutions may choose to use a model notice contained in the rule in order to be deemed to be in compliance with the notice content requirements.

For an account containing a protected amount, the financial institution may not collect a garnishment fee from the protected amount. The financial institution may only charge a garnishment fee against funds in the account in excess of the protected amount and may not charge or collect a garnishment fee after the date of account review. Financial institutions that comply with the rule's requirements are protected from liability.

IV. Section-by-Section Analysis for 31 CFR Part 212

The provisions of the rule are set forth in a new part 212 to 31 CFR. SSA, VA, RRB and OPM are each amending their existing regulations to include a cross-reference to 31 CFR part 212.

Section 212.1

Section 212.1 sets forth the purposes of the rule.

Section 212.2

The rule applies to every entity defined as a financial institution, if the financial institution holds accounts to which benefit payments are directly deposited by one or more of the Agencies.

Section 212.3

Various terms used in the regulation are defined in section 212.3. "Account holder" means a natural person against whom a garnishment order is issued and whose name appears in a financial institution's records as the direct or

beneficial owner of an account. "Account" is defined to mean any account, whether a master account or sub account, at a financial institution and to which an electronic payment may be directly routed. The definition includes master and sub accounts to reflect account structures used by credit unions. As defined, "account" does not include an account to which a benefit payment is subsequently transferred following its initial delivery by direct deposit to another account.

The definition of "benefit payment" is limited to direct deposit payments that include an "XX" in positions 54 and 55 of the Company Entry Description field in the Batch Header Record of the direct deposit entry. Because benefit recipients can cash checks rather than deposit them and take the risk that funds will be garnished, financial institutions do not need to examine accounts to identify benefit checks for purposes of complying with the rule. To determine whether a payment constitutes a benefit payment, financial institutions may rely on the presence of an "XX" encoded in positions 54 and 55 of the Company Entry Description field of the Batch Header Record of a direct deposit entry.

"Financial institution" is defined as a bank, savings association, credit union or other entity chartered under Federal or State law to engage in the business of banking. The definition is intended to be very broad, in order to capture any financial institution that might hold an account to which Federal benefits may be directly deposited.

The definition of "garnish" and "garnishment" are taken directly from the wording of Agency statutes establishing the exemption of certain Federal benefit payments from garnishment. "Garnishment fee" is defined to mean any kind of a fee that a financial institution charges to an account holder related to the receipt or processing of a garnishment order. "Garnishment order" and "order" are defined to mean a writ, order notice, summons, or similar written instruction issued by a court to effect a garnishment, as well as an order issued by a State child support enforcement agency.

"Lookback period" is defined to mean the two month period that (i) begins on the date preceding the date of account review and (ii) ends on the corresponding date of the month two months earlier, or on the last date of the month two months earlier if the corresponding date does not exist. For example, under this definition, the lookback period that begins on November 15 would end on September 15. On the other hand, the lookback period that begins on April 30 would end on February 28 (or 29 in a leap year), to reflect the fact that there are not 30 days in February.

"Protected amount" is defined as the lesser of (i) the sum of all benefit payments posted to an account between the close of business on the beginning date of the lookback period and the open of business on the ending date of the lookback period, or (ii) the balance in an account at the open of business on the date of account review.

"State" is defined to mean a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

"State child support enforcement agency" means the single and separate organizational unit in a State that has the responsibility for administering or supervising the State's plan for child and spousal support pursuant to 42 U.S.C. 654, Title IV, Part D of the Social Security Act.

Section 212.4

Section 212.4 of the rule sets forth the first action that a financial institution must take when it receives a garnishment order, which is to determine whether the order was obtained by the United States or a State child support enforcement agency. To make this determination, financial institutions may rely on the inclusion of a Notice of Right to Garnish Federal Benefits, as set forth in Appendix B. For orders obtained by the United States or a State child support enforcement agency, the financial institution is to follow its otherwise customary procedures for handling the order. For all other orders, the financial institution is required to follow the procedures in sections 212.5 and 212.6.

Section 212.5

Section 212.5 outlines the account review a financial institution must conduct if it has determined, pursuant to section 212.4, that a garnishment order was not obtained by the United States or a State child support enforcement agency. In such cases, a financial institution must review the history of the account being garnished to determine if a benefit payment was deposited into the account during the lookback period. Generally, the account review must be completed within two business days following receipt of the order. If there is insufficient information included in the order to determine whether the debtor is an account holder, the deadline for completing the account review is extended until the financial institution is able to obtain such information. In addition, in cases where the financial institution is served a batch of a large number of orders, the deadline is extended to whatever date is permitted under the terms of the garnishment orders. This provision is intended to address situations in which a single batch containing multiple garnishment orders is received. This provision does not mean that a financial institution may extend the deadline simply because a large number of separate orders are received at one time.

If the account review shows that no benefit payments were deposited to the account during the lookback period, then the financial institution would follow its otherwise customary procedures for handling the order. If a benefit payment was deposited into the account during the lookback period, then the financial institution must follow the procedures set forth in section 212.6.

Section 212.5(d) lists factors that are not relevant to a financial institution's account review. The commingling of exempt and nonexempt funds in the account is not relevant to the account review, and neither is the existence of a co-owner on the account. Similarly, the fact that benefit payments to multiple beneficiaries may have been deposited to an account during the lookback period is not relevant, as could occur if an individual receives payments on behalf of several beneficiaries. Finally, any instructions or information in a garnishment order are not relevant, including information about the nature of the debt or obligation underlying the order.

Section 212.5(e) makes it clear that financial institutions must perform the account review before taking any action related to the garnishment order that may affect funds in an account. Section 212.5(f) requires a separate account review for each account owned by an individual against whom a garnishment order has been issued, even if an individual holds more than one account at a financial institution. For example, if an individual maintains two accounts at the same financial institution, and payments issued under two different benefit programs are directly deposited to each account, both accounts must be separately reviewed and a separate protected amount must be calculated and applied for each account. Under section 212.5(f), a benefit payment that is directly deposited to an account and then subsequently transferred to another account is not treated as a benefit payment for purposes of the second account. For example, if a benefit

payment is directly deposited to an individual's checking account, and then subsequently transferred to the individual's savings account, the financial institution, in performing the account reviews, would treat the payment as a benefit payment for purposes of the checking account, but not for purposes of the savings account.

Section 212.6

Section 212.6 contains the provisions that apply if a financial institution determines that one or more benefit payments were deposited to an account during the lookback period. In such a case, the financial institution must calculate the protected amount, as defined in section 212.3. A financial institution may not freeze, or otherwise restrict the account holder's access to, the protected amount. The financial institution must provide the account holder with "full and customary access" to the protected amount. The Agencies intend by this language to ensure that after a garnishment order is received, the account holder continues to have the same degree of access to the protected funds that was provided prior to the receipt of the order. The protection against freezing triggered by the depositing of exempt funds during the lookback period is automatic. A financial institution may not require an account holder to assert any right to a garnishment exemption or take any other action prior to accessing the protected amount.

Section 212.6(b) requires the financial institution to calculate and establish a protected amount for each account it holds in the name of an account holder. Under section 212.6(c), a protected amount calculated and established by a financial institution is conclusively considered to be exempt from garnishment under law.

Section 212.6(e) requires the financial institution to send a notice to the account holder. The content and timing required for the notice are set forth in section 212.7.

Section 212.6(f) addresses the situation in which a financial institution receives service of the same garnishment order more than once. The financial institution must execute the account review one time upon the first service of a given garnishment order. If the same garnishment order is subsequently served again upon the financial institution, the financial institution is not required to perform another account review and is restricted from taking any action on the account. If the financial institution is subsequently served a new or different garnishment order against the same account, the financial institution must execute a new account review.

Section 212.6(g) provides that a financial institution shall not continually garnish amounts deposited or credited to the account following the date of account review, and may not take any action to freeze any amounts subsequently deposited or credited unless served a new or different garnishment order. A small number of States authorize the issuance of a "continuing" garnishment order, i.e., an order requiring the garnishee to monitor, preserve and remit funds coming into the garnishee's custody on an ongoing basis. The rule operates to prohibit a financial institution that is served with a continuing garnishment from complying with the order's ongoing requirements.

Section 212.6(h) prohibits a financial institution from charging a garnishment fee against a protected amount, and further prohibits a financial institution from charging or collecting such a fee after the date of account review, i.e., retroactively.

Section 212.7

Section 212.7(a) requires the financial institution to send the notice required under section 212.6(e) if a benefit payment was deposited into an account during the lookback period and the balance in the account on the date of account review was above zero dollars. There is no requirement to send a notice if the balance in the account is zero or negative on the date of account review. Section 212.7(b) sets forth the content of the notice that financial institutions are required to send to account holders. The financial institution must notify the account holder that the financial institution has received a garnishment order and must briefly explain what a garnishment is. The notice must also include other information regarding the account holder's rights. Financial institutions may choose to use the model notice in Appendix A to the rule, in which case they will be deemed to be in compliance with the requirements of section 212.7(b). However, use of the model notice is optional.

Section 212.7(c) permits, but does not require, a financial institution to include the following additional information in the notice: Means of contacting a local free attorney or legal aid service; means of contacting the financial institution; and a statement that the financial institution is not providing legal advice by issuing the notice. Also, under section 212.7(d), the financial institution may modify the content of the notice to integrate information about a State's garnishment rules and protections, to avoid confusion regarding the interplay of the rule with State requirements, or to provide more complete information about an account.

The financial institution must deliver the notice directly to the account holder, and only information and documents pertaining to the garnishment order may be included in the communication. The notice must be sent within three business days from the date of account review. If the account holder has multiple accounts, the financial institution may send one notice with information related to all the accounts. Section 212.7(h) makes it clear that by issuing a notice, a financial institution shall not be deemed to be providing legal advice or creating any obligation to provide legal advice.

Section 212.8

Section 212.8 makes it clear that the rule is not to be interpreted as limiting any rights an individual may have under Federal law to assert an exemption from garnishment, or as altering the exempt status of funds in the account. For example, although the rule does not require a financial institution to review and identify Federal benefits deposited by check to an account, those funds are protected under Federal law and the account holder may assert a claim for that protection in accordance with the procedures specified under the applicable law. In addition, it is possible that an account holder could have exempt funds on deposit in excess of the protected amount. In that case, the account holder could assert the protection available under Federal law for those funds. The rule does not limit or change the protected status of those funds.

Section 212.8 provides that the rule is not to be construed to invalidate any term or condition of an account agreement between a financial institution and an account holder, as long as the term or condition is not inconsistent with the rule. The requirements of the rule may not be changed by agreement, except in the narrow circumstance permitted under section 212.10(d)(3), i.e., where an account holder instructs a financial institution, in written instructions dated after the date of service of the garnishment order, to use exempt funds to satisfy the order. Thus, a financial institution may not require an account holder to waive any protection available under the rule, nor may it include in an account agreement terms inconsistent with the requirements of the rule. However, the section 212.6(b)

requirement that a financial institution ensure that the account holder has access to the protected amount would be subject to any limitation on funds availability to which the account is subject. For example, if funds on deposit are subject to a hold consistent with Regulation CC,[2] or a limitation on withdrawal applicable to a time deposit, the proposed rule would not override or affect those limitations.

Section 212.9

Section 212.9 preempts any State or local government law or regulation that is inconsistent with any provision of the rule, but only to the extent of the inconsistency. If a State law would prevent a financial institution from complying with the requirements of the rule, the State law is preempted. However, the rule does not preempt requirements under State law that are in addition to the rule's requirements. For example, some State laws may protect from garnishment funds other than benefit payments, or may protect a higher amount of benefit payments. Other State laws may require protection of a flat amount without regard to the types of funds that are deposited to an account. In such cases, the financial institution will need to satisfy the rule's requirements and then determine what, if any, additional obligations exist under State law. The rule does not displace or supersede such State law requirements, provided that the financial institution has complied with all the requirements of the rule.

Section 212.10

Section 212.10 provides a safe harbor for financial institutions that comply in good faith with the rule. Thus, for example, if a financial institution made available the protected amount to an account holder in accordance with the rule, the financial institution would not be liable even if a judgment creditor were able to establish in court that funds in the account at the time the garnishment order was served were attributable to nonexempt deposits. In addition, if a financial institution performed an account review within the two business day deadline, and funds were withdrawn from the account during this time, the financial institution would not be liable to a creditor or court for failure to preserve the funds in the account, even if there was no protected amount for the account. This protection exists for a financial institution despite the occurrence of a bona fide error or a settlement adjustment.

Section 212.10(c) provides a safe harbor specifically to a financial institution that provides in good faith any optional information in the notice to the account holder, as permitted in section 212.7(c) and (d). Section 212.10(d)(3) allows a financial institution to follow an account holder's express instruction to use an otherwise protected amount to satisfy the garnishment order. The instruction must be in writing and must be delivered after the date on which the financial institution received the garnishment order. This provision does not permit an account holder to instruct a financial institution, in advance or in a standing agreement, to use exempt funds to satisfy a garnishment order.

Section 212.11

Under section 212.11, compliance with the rule will be enforced by the Federal banking agencies. Financial institutions must maintain records of account activity and actions taken in handling garnishment orders sufficient to demonstrate compliance with the rule for a period of not less than two years from the date on which the financial institution receives the garnishment order.

Section 212.12

Section 212.12 provides that the rule may be amended only by a joint rulemaking issued by Treasury and all of the agencies defined as a "benefit agency" in 31 CFR 212.3.

Appendix A to Part 212

Appendix A sets forth proposed model language that would satisfy the notice requirements of section 212.7(b). Financial institutions are not required to use this model language. However, financial institutions that use the model notice will be deemed to be in compliance with the requirements of section 212.7(b).

Appendix B to Part 212

Appendix B contains the form of Notice of Right to Garnish Federal Benefits which is referred to in section 212.4(a).

Appendix C to Part 212

Appendix C contains examples demonstrating how the Lookback Period and Protected Amount are calculated.

V. Regulatory Analysis

A. Executive Order 12866

It has been determined that this interim final rule is a significant regulatory action as defined in E.O. 12866. The Office of Management and Budget has reviewed this regulation.

B. Regulatory Flexibility Acts

In the Regulatory Analysis to the proposed rule, the Agencies did not certify that the proposed rule would not have a significant economic impact on a substantial number of small entities, in particular small financial institutions. While the Agencies believed the proposed rule likely would not have a significant impact on small financial institutions, the Agencies indicated they did not have complete data to make a conclusive determination. Accordingly, the Agencies prepared a joint Initial Regulatory Flexibility Analysis (IRFA) in accordance with 5 U.S.C. 603 and specifically requested comment on the proposed rule's impact on small entities, including costs, compliance burden, and changes in operating procedures. The Agencies stated an interest in knowing whether particular aspects of the proposed rule would be especially costly or burdensome.

For purposes of the IRFA, a "small entity" was a national bank, savings association, State member bank, or State or Federal credit union with assets of $175 million or less, based on regulations promulgated by the Small Business Administration (SBA). Using information provided by the commenter or information available to the Agencies regarding the asset size of a financial institution commenting, the Agencies identified comment letters from seven credit unions that qualified as a "small entity" under the SBA regulations. The Agencies also received comment letters from several financial institution industry associations whose membership could include small entities.

No small entity submitted comments specifically quantifying its projected costs. Neither did any small entity provide information on the number of court ordered garnishments it received. All comments from entities of all sizes on the burden of the proposed rule were qualitative or subjective, in that no commenter offered empirical data or statistical evidence to quantify the economic impact. The following is a summary of comments and issues raised by the small entities and industry associations that may represent small entities.

Bank trade associations, while critical of various aspects of the proposed rule, generally acknowledged the need for a Federal regulation and indicated they could comply with it, even as they offered numerous suggestions for streamlining and simplifying its requirements. The small credit unions,

[2] Regulation CC, 12 CFR part 229, is the Federal Reserve's regulation establishing rules covering the collection and return of checks by banks.

and several but not all credit union trade associations, opposed the proposed rule and objected to various provisions as time-intensive and manual, and unreasonable given the required processing deadlines.

Two credit union trade associations indicated that many credit unions would not have the data processing capability to conduct a 60 day account review and would have to conduct the review manually, and suggested the length of the lookback period be reduced. One small credit union objected to the 60 day lookback period indicating that it would pose an undue operational burden requiring time, expense, and manpower not readily available. (Several small credit unions also objected to the 60 day lookback period on the policy grounds that, for those who truly subsist on Federal benefits, 30 days was long enough and sufficient to fund a dispute over other exempt benefits.) Several credit union associations proposed allowing financial institutions to use a uniform flat amount as the protected amount asserting that this option negates the need to conduct an account review and becomes a much more manageable process for credit unions with limited resources. One credit union trade association indicated that 90% of its members felt that requiring an account review within one business day of receipt of a garnishment order was unreasonable, but that two days struck the right balance between timeliness and flexibility. Many of the small credit unions expressed concern that the proposed rule would not apply to garnishment orders obtained by the United States. Commenters also raised concerns about the requirement to issue a notice to the account holder and the time allowed to produce the notice. One small credit union commented on the $175 million threshold used in the SBA definition for a small credit union, indicating that a credit union with $55 million in assets had little in common with a credit union with three times the assets, and that capabilities in staffing, operations, and cost tolerance varied greatly across the range of institutions under $175 million in assets.

Based on a thorough analysis of comments on the proposed rule, and based on a survey of small Federal credit unions conducted by the Treasury following the comment period,[3] the Agencies certify that this interim final rule will not have a significant economic impact on a substantial number of small entities, in accordance with 5 U.S.C. 605(b).

The Agencies' certification that the interim final rule will not have a significant economic impact on a substantial number of small financial institutions is based on three factual findings.

First, the Treasury surveyed a representative sample of the 3,457 active Federal credit unions with assets of $50 million or less, which represents the three smallest asset strata tracked by the National Credit Union Administration (NCUA): Assets of less than $2 million, assets of at least $2 million but less than $10 million, and assets of at least $10 million but less than $50 million. The survey sought information about the number of garnishment orders served on these small credit unions, their administrative procedures for handling garnishment orders, and amount of time it took to process a typical order. The survey sample was a statistically valid representation of the entire population, reflecting the variations in asset size and geographic location of all Federal credit unions with assets of $50 million or less.

The survey indicated that the mean number of garnishment orders received annually by these small credit unions was five, and that both the median and mode number of garnishment orders received annually was less than one. The survey revealed that 97 percent of these smallest credit unions received fewer than six garnishment orders per year, and that the rate at which garnishment orders were served was at most a function of one order per year per $5 million in assets. The Agencies conclude from this empirical data that the interim final rule does not represent a significant burden on these small entities. Even if a small credit union with assets under $50 million processed a garnishment order entirely manually and took an additional 2 hours to handle a garnishment order by following the new procedures in the interim final rule—including conducting an account review, establishing a protected amount, and mailing a notice—the actual processing time would on average represent marginal work on the order of 10 hours per year.

If the results of the survey are extrapolated to other financial institutions with up to $175 million in assets, given a stable function of one order per year per $5 million in assets, the burden of entirely manual compliance for the average small entity would represent only marginal workload for one employee, or approximately 70 hours or 3.4 percent of one annual full time equivalent. Therefore, even if a financial institution must use entirely manual processes to comply with the rule, the facts on the volume of garnishment orders typically served on small credit unions demonstrate that the regulation will not have a significant economic impact on a substantial number of small entities.

Second, information provided by the NCUA indicates that only 2% of small Federal credit unions with assets of $20 million or less (fewer than 40 credit unions out of 1,924) use a manual accounting system to maintain share accounts and loan transactions and would not be able to perform an account review by accessing a system. Thus, nearly all credit unions large and small would have a capability to search an account history using an account processing system with stored data or stored account statements to help identify exempt Federal benefit payments. Therefore, the Agencies conclude that there are not many credit unions that would not have the data processing capability to conduct a two month account review and would have to conduct the review entirely manually. In addition, based on inquiries made of the vendors providing core processing systems to small credit unions, the Agencies note that there are no significant problems to enhancing the systems to include specific functionality for fully automating the measurement of the lookback period and the conduct of the account review.

Third, as more fully discussed in the supplementary information above, the Agencies carefully considered the comments on the proposed rule and have made a number of specific changes in the interim final rule based directly on comments designed to lessen the administrative burden. These changes include among others:

- Increasing the amount of time permitted to conduct an account review from one business day to two business days following the receipt of a garnishment order, and allowing further time to conduct the account review if the financial institution has difficulty in determining whether a debtor is an account holder at the institution.
- Eliminating the requirement to issue a notice to the account holder in cases where the balance in an account is zero or negative on the date of account review, which based on comments from financial institutions is a substantial proportion of cases.
- Increasing the amount of time required to issue the notice from two business days to three business days from the date of account review.

[3] Survey, *Information on Processing Garnishment Orders,* OMB Control Number 1505–0225, expiration date 2/28/2011.

• Eliminating the requirement that the notice must contain a means of contacting the financial institution, thereby reducing the incidence of customer service calls related to debt disputes to which the financial institution is not a party.

• Eliminating the requirement to examine a garnishment order to ascertain whether the plaintiff named in the caption of the order is the United States, and allowing financial institutions to determine if a garnishment order is excluded from the rule's administrative requirements by relying solely on the presence of a garnishment certification attached or included with the order.

• Limiting record retention to 2 years, in lieu of an open ended requirement to retain records to demonstrate compliance with the regulation.

• Revising the definition of the lookback period from 60 days to a two month "date-to-date" methodology, making the account review easier to administer and less prone to errors.

• Allowing financial institutions to rely solely and conclusively on the exemption identifiers encoded in Federal ACH header records to determine if a Federal benefit payment has been deposited to an account. The Agencies again note that the garnishment exemption identifiers in the Federal ACH header records will be included in a field that is captured and appears on account statements, which will facilitate both automated and visual searches for exempt Federal benefit payments. Hence, even the smallest financial institutions that do not maintain an automated processing system, but receive paper reports from the organization that processes their ACH transactions, will be able to perform the account review straightforwardly.

Thus, the administrative requirements of the rulemaking have been substantively reduced based on comments from financial institutions.

For the foregoing reasons, the Agencies conclude the interim final rule will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13132 Determination

Executive Order 13132 outlines fundamental principles of Federalism, and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have "substantial direct effects" on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies promulgating regulations that have these Federalism implications must consult with State and local officials, and describe the extent of their consultation and the nature of the concerns of State and local officials in the preamble to the regulation.

In the Agencies' view, the rule may have Federalism implications, because it has direct, although not substantial, effects on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among various levels of government. The provision in the rule (§ 212.5) where the Agencies establish a process for financial institutions' treatment of accounts upon the receipt of a garnishment order could potentially conflict with State garnishment laws prescribing a formula for financial institutions to pay such claims.

The rule's central provision requiring a financial institution to establish a protected amount will affect only a very small percentage of all garnishment orders issued by State courts, since in the vast majority of cases an account will not contain an exempt Federal benefit payment. Moreover, States may choose to provide stronger protections against garnishment, and the regulation will only override State law to the minimum extent necessary to protect Federal benefits payments from garnishment.

Under 42 U.S.C. 407(a) and 42 U.S.C. 1383(d)(1), Federal Old-Age, Survivors, and Disability Insurance benefits and Supplemental Security Income payments are generally exempt from garnishment. 42 U.S.C. 405(a) provides the Commissioner of Social Security with the authority to make rules and regulations concerning Federal Old-Age, Survivors, and Disability Insurance benefits. The Social Security Act does not require State law to apply in the event of conflict between State and Federal law.

Under 38 U.S.C. 5301(a), benefits administered by VA are generally exempt from garnishment. 38 U.S.C. 501(a) provides the Secretary of Veterans Affairs with the authority to make rules and regulations concerning VA benefits. The statutes governing VA benefits do not require State law to apply in the event of conflict between State and Federal law.

Under 45 U.S.C. 231m(a), Federal railroad retirement benefits are generally exempt from garnishment. 45 U.S.C. 231f(b)(5) provides the RRB with rulemaking authority over issues rising from the administration of Federal Railroad retirement benefits. The Railroad Retirement Act of 1974 does not require State law to apply in the event of conflict between State and Federal law.

Under 45 U.S.C. 352(e), Federal railroad unemployment and sickness benefits are generally exempt from garnishment. 45 U.S.C. 362(1) provides the RRB with rulemaking authority over issues rising from the administration of Federal railroad unemployment and sickness benefits. The Railroad Unemployment Insurance Act does not require State law to apply in the event of a conflict between State and Federal law.

Under 5 U.S.C. 8346, for the Civil Service Retirement System (CSRS) and under 5 U.S.C. 8470, for the Federal Employee Retirement Systems (FERS), Federal retirement benefits are generally exempt from garnishment. 5 U.S.C. 8347 and 5 U.S.C. 8461, respectively, provide the Director of OPM with the authority to make rules and regulations concerning CSRS and FERS benefits. OPM benefits statutes do not require State law to apply in the event of conflict between State and Federal law.

In accordance with the principles of Federalism outlined in Executive Order 13132, the Agencies consulted with State officials on issues addressed in this rulemaking. Specifically, the Agencies sought perspective on those matters where Federalism implications could potentially conflict with State garnishment laws. The rule establishes certain processes that provide a financial institution protection from liability when a Federal benefit payment exempt from garnishment is directly deposited into an account and the financial institution provides a certain amount of lifeline funds to the benefit recipient.

D. Unfunded Mandates Reform Act of 1995 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The Agencies have determined that this rule will not result in expenditures by State, local, and tribal governments, or

by the private sector, of $100 million or more. Accordingly, the Agencies have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

E. Plain Language

In 1998, the President issued a memorandum directing each agency in the Executive branch to use plain language for all new proposed and final rulemaking documents issued on or after January 1, 1999. The Agencies specifically invite your comments on how to make this interim final rule easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?
- Does the rule contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make them easier to understand?
- What else could we do to make the rule easier to understand?

F. Paperwork Reduction Act

The information collections contained in this interim final rule have been reviewed and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. chapter 35) and assigned OMB control number 1510–0230. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and an individual is not required to respond to, a collection of information unless it displays a valid OMB control number.

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to [insert contact information], Department of the Treasury, Washington, DC 20220. Comments on the collection of information must be received by May 24, 2011. Comments are specifically requested concerning:

Whether the collection of information is necessary for the proper performance of the functions of the Agencies, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in these regulations are found in §§ 212.6 and 212.11 and Appendices A and B.

Estimated total annual reporting burden: 125,000 hours.

Estimated average annual burden per respondent: 8 hours.

Estimated number of respondents: 15,771.

Estimated frequency of responses: As needed.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

G. Authority To Issue Interim Final Rule

The Administrative Procedure Act (5 U.S.C. 551 *et seq.*) (APA) generally requires public notice before promulgation of regulations. *See* 5 U.S.C. 553(b). The Agencies published a notice of proposed rulemaking requesting comment on the proposed garnishment rule on April 19, 2010 (75 FR 20299). The Agencies have considered the comments received in developing this interim final rule but also wish to provide the public another opportunity to comment on it.

List of Subjects

5 CFR Part 831

Administrative practice and procedure, alimony, benefit payments, claims, disability benefits, exempt payments, financial institutions, firefighters, garnishment, government employees, income taxes, intergovernmental relations, law enforcement officers, pensions, preemption, reporting and recordkeeping requirements, retirement.

5 CFR Part 841

Administrative practice and procedure, air traffic controllers, benefit payments, claims, disability benefits, exempt payments, financial institutions, firefighters, garnishment, government employees, income taxes, intergovernmental relations, law enforcement officers, pensions, preemption, retirement.

20 CFR Part 350

Alimony, benefit payments, child support, exempt payments, financial institutions, garnishment, preemption, railroad retirement, railroad unemployment insurance, recordkeeping.

20 CFR Part 404

Administrative practice and procedure, aged, alimony, benefit payments, blind, disability benefits, exempt payments, financial institutions, garnishment, government employees, income taxes, insurance, investigations, old-age, preemption, Survivors and Disability Insurance, penalties, railroad retirement, reporting and recordkeeping requirements, Social Security, travel and transportation expenses, treaties, veterans, vocational rehabilitation.

20 CFR Part 416

Administrative practice and procedure, alcoholism, benefit payments, drug abuse, exempt payments, financial institutions, garnishment, investigations, Medicaid, penalties, preemption, reporting and recordkeeping requirements, Supplemental Security Income (SSI), travel and transportation expenses, vocational rehabilitation.

31 CFR Part 212

Benefit payments, exempt payments, financial institutions, garnishment, preemption, recordkeeping.

38 CFR Part 1

Administrative practice and procedure, archives and records, benefit payments, cemeteries, claims, courts, crime, flags, exempt payments, financial institutions, freedom of information, garnishment, government contracts, government employees, government property, infants and children, inventions and patents, parking, penalties, preemption, privacy, reporting and recordkeeping requirements, seals and insignia, security measures, wages.

Department of the Treasury, Fiscal Service (Treasury)

Authority and Issuance

For the reasons set forth in the preamble, Treasury adds a new part 212 to Title 31 of the Code of Federal Regulations, to read as follows:

PART 212—GARNISHMENT OF ACCOUNTS CONTAINING FEDERAL BENEFIT PAYMENTS

Sec.

Authority: 5 U.S.C. 8346; 5 U.S.C. 8470; 5 U.S.C. 1103; 31 U.S.C. 321; 31 U.S.C. 3321; 31 U.S.C. 3332; 38 U.S.C. 5301(a); 38 U.S.C. 501(a); 42 U.S.C. 405(a); 42 U.S.C. 407; 42 U.S.C. 659; 42 U.S.C. 1383(d)(1); 45 U.S.C. 231f(b); 45 U.S.C. 231m; 45 U.S.C. 352(e); 45 U.S.C. 362(1).

§ 212.1 Purpose.

The purpose of this part is to implement statutory provisions that protect Federal benefits from garnishment by establishing procedures that a financial institution must follow when served a garnishment order against an account holder into whose account a Federal benefit payment has been directly deposited.

§ 212.2 Scope.

This part applies to:

(a) *Entities.* All financial institutions, as defined in § 212.3.

(b) *Funds.* Federal benefit payments protected from garnishment pursuant to the following authorities:

(1) SSA benefit payments protected under 42 U.S.C. 407 and 42 U.S.C. 1383(d)(1);

(2) VA benefit payments protected under 38 U.S.C. 5301(a);

(3) RRB benefit payments protected under 45 U.S.C. 231m(a) and 45 U.S.C. 352(e); and

(4) OPM benefit payments protected under 5 U.S.C. 8346 and 5 U.S.C. 8470.

§ 212.3 Definitions.

For the purposes of this part, the following definitions apply.

Account means an account, including a master account or sub account, at a financial institution and to which an electronic payment may be directly routed.

Account holder means a natural person against whom a garnishment order is issued and whose name appears in a financial institution's records as the direct or beneficial owner of an account.

Account review means the process of examining deposits in an account to determine if a benefit agency has deposited a benefit payment into the account during the lookback period.

Benefit agency means the Social Security Administration (SSA), the Department of Veterans Affairs (VA), the Office of Personnel Management (OPM), or the Railroad Retirement Board (RRB).

Benefit payment means a Federal benefit payment referred to in § 212.2(b) paid by direct deposit to an account with the character "XX" encoded in positions 54 and 55 of the Company Entry Description field of the Batch Header Record of the direct deposit entry.

Federal banking agency means the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, or the National Credit Union Administration.

Financial institution means a bank, savings association, credit union, or other entity chartered under Federal or State law to engage in the business of banking.

Freeze or *account freeze* means an action by a financial institution to seize, withhold, or preserve funds, or to otherwise prevent an account holder from drawing on or transacting against funds in an account, in response to a garnishment order.

Garnish or *garnishment* means execution, levy, attachment, garnishment, or other legal process.

Garnishment fee means any service or legal processing fee, charged by a financial institution to an account holder, for processing a garnishment order or any associated withholding or release of funds.

Garnishment order or *order* means a writ, order, notice, summons, judgment, or similar written instruction issued by a court or a State child support enforcement agency, including a lien arising by operation of law for overdue child support, to effect a garnishment against a debtor.

Lookback period means the two month period that begins on the date preceding the date of account review and ends on the corresponding date of the month two months earlier, or on the last date of the month two months earlier if the corresponding date does not exist. Examples illustrating the application of this definition are included in Appendix C to this part.

Protected amount means the lesser of the sum of all benefit payments posted to an account between the close of business on the beginning date of the lookback period and the open of business on the ending date of the lookback period, or the balance in an account at the open of business on the date of account review. Examples illustrating the application of this definition are included in Appendix C to this part.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

State child support enforcement agency means the single and separate organizational unit in a State that has the responsibility for administering or supervising the State's plan for child and spousal support pursuant to Title IV, Part D, of the Social Security Act, 42 U.S.C. 654.

United States means:

(1) A Federal corporation,

(2) An agency, department, commission, board, or other entity of the United States, or

(3) An instrumentality of the United States, as set forth in 28 U.S.C. 3002(15).

§ 212.4 Initial action upon receipt of a garnishment order.

(a) *Examination of order for Notice of Right to Garnish Federal Benefits.* Prior to taking any other action related to a garnishment order issued against a debtor, and no later than two business days following receipt of the order, a financial institution shall examine the order to determine if the United States or a State child support enforcement agency has attached or included a Notice of Right to Garnish Federal Benefits, as set forth in Appendix B to this part.

(b) *Notice of Right to Garnish Federal Benefits is attached to or included with the order.* If a Notice of Right to Garnish Federal Benefits is attached to or included with the garnishment order, then the financial institution shall follow its otherwise customary procedures for handling the order and shall not follow the procedures in § 212.5 and § 212.6.

(c) *No Notice of Right to Garnish Federal Benefits.* If a Notice of Right to Garnish Federal Benefits is not attached to or included with the garnishment order, then the financial institution shall follow the procedures in § 212.5 and § 212.6.

§ 212.5 Account review.

(a) *Timing of account review.* When served a garnishment order issued against a debtor, a financial institution shall perform an account review:

(1) No later than two business days following receipt of (A) the order, and (B) sufficient information from the creditor that initiated the order to

determine whether the debtor is an account holder, if such information is not already included in the order; or

(2) In cases where the financial institution is served a batch of a large number of orders, by a later date that may be permitted by the creditor that initiated the orders, consistent with the terms of the orders. The financial institution shall maintain records on such batches and creditor permissions, consistent with § 212.11(b),

(b) *No benefit payment deposited during lookback period.* If the account review shows that a benefit agency did not deposit a benefit payment into the account during the lookback period, then the financial institution shall follow its otherwise customary procedures for handling the garnishment order and shall not follow the procedures in § 212.6.

(c) *Benefit payment deposited during lookback period.* If the account review shows that a benefit agency deposited a benefit payment into the account during the lookback period, then the financial institution shall follow the procedures in § 212.6.

(d) *Uniform application of account review.* The financial institution shall perform an account review without consideration for any other attributes of the account or the garnishment order, including but not limited to:

(1) The presence of other funds, from whatever source, that may be commingled in the account with funds from a benefit payment;

(2) The existence of a co-owner on the account;

(3) The existence of benefit payments to multiple beneficiaries, and/or under multiple programs, deposited in the account;

(4) The balance in the account, provided the balance is above zero dollars on the date of account review;

(5) Instructions to the contrary in the order; or

(6) The nature of the debt or obligation underlying the order.

(e) *Priority of account review.* The financial institution shall perform the account review prior to taking any other actions related to the garnishment order that may affect funds in the account.

(f) *Separate account reviews.* The financial institution shall perform the account review separately for each account in the name of an account holder against whom a garnishment order has been issued. In performing account reviews for multiple accounts in the name of one account holder, a financial institution shall not trace the movement of funds between accounts by attempting to associate funds from a benefit payment deposited into one account with amounts subsequently transferred to another account.

§ 212.6 Rules and procedures to protect benefits.

The following provisions apply if an account review shows that a benefit agency deposited a benefit payment into an account during the lookback period.

(a) *Protected amount.* The financial institution shall immediately calculate and establish the protected amount for an account. The financial institution shall ensure that the account holder has full and customary access to the protected amount, which the financial institution shall not freeze in response to the garnishment order. An account holder shall have no requirement to assert any right of garnishment exemption prior to accessing the protected amount in the account.

(b) *Separate protected amounts.* The financial institution shall calculate and establish the protected amount separately for each account in the name of an account holder, consistent with the requirements in § 212.5(f) to conduct distinct account reviews.

(c) *No challenge of protection.* A protected amount calculated and established by a financial institution pursuant to this section shall be conclusively considered to be exempt from garnishment under law.

(d) *Funds in excess of the protected amount.* For any funds in an account in excess of the protected amount, the financial institution shall follow its otherwise customary procedures for handling garnishment orders, including the freezing of funds, but consistent with paragraphs (f) and (g) of this section.

(e) *Notice.* The financial institution shall issue a notice to the account holder named in the garnishment order, in accordance with § 212.7.

(f) *One-time account review process.* The financial institution shall perform the account review only one time upon the first service of a given garnishment order. The financial institution shall not repeat the account review or take any other action related to the order if the same order is subsequently served again upon the financial institution. If the financial institution is subsequently served a new or different garnishment order against the same account holder, the financial institution shall perform a separate and new account review.

(g) *No continuing or periodic garnishment responsibilities.* The financial institution shall not continually garnish amounts deposited or credited to the account following the date of account review, and shall take no action to freeze any funds subsequently deposited or credited, unless the institution is served with a new or different garnishment order, consistent with the requirements of this part.

(h) *Impermissible garnishment fee.* The financial institution may not charge or collect a garnishment fee against a protected amount, and may not charge or collect a garnishment fee after the date of account review.

§ 212.7 Notice to the account holder.

A financial institution shall issue the notice required by § 212.6(e) in accordance with the following provisions.

(a) *Notice requirement.* The financial institution shall send the notice in cases where:

(1) A benefit agency deposited a benefit payment into an account during the lookback period; and

(2) The balance in the account on the date of account review was above zero dollars and the financial institution established a protected amount.

(b) *Notice content.* The financial institution shall notify the account holder named in the garnishment order of the following facts and events in readily understandable language.

(1) The financial institution's receipt of an order against the account holder.

(2) The date on which the order was served.

(3) A succinct explanation of garnishment.

(4) The financial institution's requirement under Federal regulation to ensure that account balances up to the protected amount specified in § 212.3 are protected and made available to the account holder if a benefit agency deposited a benefit payment into the account in the last two months.

(5) The account subject to the order and the protected amount established by the financial institution.

(6) The financial institution's requirement pursuant to State law to freeze other funds in the account to satisfy the order and the amount frozen, if applicable.

(7) The amount of any garnishment fee charged to the account, consistent with § 212.6.

(8) A list of the Federal benefit payments subject to this part, as identified in § 212.2(b).

(9) The account holder's right to assert against the creditor that initiated the order a further garnishment exemption for amounts above the protected amount, by completing exemption claim forms, contacting the court of jurisdiction, or contacting the creditor, as customarily applicable for a given jurisdiction.

(10) The account holder's right to consult an attorney or legal aid service in asserting against the creditor that initiated the order a further garnishment exemption for amounts above the protected amount.

(11) The name of the creditor, and, if contact information is included in the order, means of contacting the creditor.

(c) *Optional notice content.* The financial institution may notify the account holder named in the garnishment order of the following facts and events in readily understandable language.

(1) Means of contacting a local free attorney or legal aid service.

(2) Means of contacting the financial institution,

(3) By issuing the notice required by this part, the financial institution is not providing legal advice.

(d) *Amending notice content.* The financial institution may amend the content of the notice to integrate information about a State's garnishment rules and protections, for the purposes of avoiding potential confusion or harmonizing the notice with State requirements, or providing more complete information about an account.

(e) *Notice delivery.* The financial institution shall issue the notice directly to the account holder, or to a fiduciary who administers the account and receives communications on behalf of the account holder, and only information and documents pertaining to the garnishment order, including other notices or forms that may be required under State or local government law, may be included in the communication.

(f) *Notice timing.* The financial institution shall send the notice to the account holder within 3 business days from the date of account review.

(g) *One notice for multiple accounts.* The financial institution may issue one notice with information related to multiple accounts of an account holder.

(h) *Not legal advice.* By issuing a notice required by this part, a financial institution creates no obligation to provide, and shall not be deemed to be offering, legal advice.

§ 212.8 Other rights and authorities.

(a) *Exempt status.* Nothing in this part shall be construed to limit an individual's right under Federal law to assert against a creditor a further exemption from garnishment for funds in excess of the protected amount, or to alter the exempt status of funds that may be protected from garnishment under Federal law.

(b) *Account agreements.* Nothing in this part shall be construed to invalidate any term or condition of an account agreement between a financial institution and an account holder that is not inconsistent with this part.

§ 212.9 Preemption of State law.

(a) *Inconsistent law preempted.* Any State or local government law or regulation that is inconsistent with a provision of this part is preempted to the extent of the inconsistency. A State law or regulation is inconsistent with this part if it requires a financial institution to take actions or make disclosures that contradict or conflict with the requirements of this part or if a financial institution cannot comply with the State law or regulation without violating this part.

(b) *Consistent law not preempted.* This regulation does not annul, alter, affect, or exempt any financial institution from complying with the laws of any State with respect to garnishment practices, except to the extent of an inconsistency. A requirement under State law to protect benefit payments in an account from freezing or garnishment at a higher protected amount than is required under this part is not inconsistent with this part if the financial institution can comply with both this part and the State law requirement.

§ 212.10 Safe harbor.

(a) *Protection during examination and pending review.* A financial institution that complies in good faith with this part shall not be liable to a creditor that initiates a garnishment order, or for any penalties under State law, contempt of court, civil procedure, or other law for failing to honor a garnishment order, for account activity during:

(1) The two business days following the financial institution's receipt of a garnishment order during which the financial institution must determine if the United States or a State child support enforcement agency has attached or included a Notice of Right to Garnish Federal Benefits, as set forth in § 212.4; or

(2) The time between the financial institution's receipt of the garnishment order and the date by which the financial institution must perform the account review, as set forth in § 212.5.

(b) *Protection when protecting or freezing funds.* A financial institution that complies in good faith with this part shall not be liable to a creditor that initiates a garnishment order for any protected amounts, to an account holder for any frozen amounts, or for any penalties under State law, contempt of court, civil procedure, or other law for failing to honor a garnishment order in cases where:

(1) A benefit agency has deposited a benefit payment into an account during the lookback period, or

(2) The financial institution has determined that the order was obtained by the United States or issued by a State child support enforcement agency by following the procedures in § 212.4.

(c) *Protection for providing additional information to account holder.* A financial institution shall not be liable for providing in good faith any optional information in the notice to the account holder, as set forth in § 212.7(c) and (d).

(d) *Protection for financial institutions from other potential liabilities.* A financial institution that complies in good faith with this part shall not be liable for:

(1) Bona fide errors that occur despite reasonable procedures maintained by the financial institution to prevent such errors in complying with the provisions of this part;

(2) Customary clearing and settlement adjustments that affect the balance in an account, including a protected amount, such as deposit reversals caused by the return of unpaid items, or debit card transactions settled for amounts higher than the amounts originally authorized; or

(3) Honoring an account holder's express written instruction, that is both dated and provided by the account holder to the financial institution following the date on which it has been served a particular garnishment order, to use an otherwise protected amount to satisfy the order.

§ 212.11 Compliance and record retention.

(a) *Enforcement.* Federal banking agencies will enforce compliance with this part.

(b) *Record retention.* A financial institution shall maintain records of account activity and actions taken in response to a garnishment order, sufficient to demonstrate compliance with this part, for a period of not less than two years from the date on which the financial institution receives the garnishment order.

§ 212.12 Amendment of this part.

This part may be amended only by a rulemaking issued jointly by Treasury and all of the benefit agencies as defined in § 212.3.

Appendix A to Part 212—Model Notice to Account Holder

A financial institution may use the following model notice to meet the requirements of § 212.7. Although use of the model notice is not required, a financial

institution using it properly is deemed to be in compliance with § 212.7.

Information in brackets should be completed by the financial institution. Where the bracketed information indicates a choice of words, as indicated by a slash, the financial institution should either select the appropriate words or provide substitute words suitable to the garnishment process in a given jurisdiction.

Parenthetical wording in italics represents instructions to the financial institution and should not be printed with the notice. In most cases, this wording indicates that the model language either is optional for the financial institution, or should only be included if some condition is met.

MODEL NOTICE:

[Financial institution name, city, and State, shown as letterhead or otherwise printed at the beginning of the notice]

IMPORTANT INFORMATION ABOUT YOUR ACCOUNT

Date:
Notice to:
Account Number:

Why am I receiving this notice?

On [date on which garnishment order was served], [Name of financial institution] received a garnishment order from a court to [freeze/remove] funds in your account. The amount of the garnishment order was for $[amount of garnishment order]. We are sending you this notice to let you know what we have done in response to the garnishment order.

What is garnishment?

Garnishment is a legal process that allows a creditor to remove funds from your [bank]/[credit union] account to satisfy a debt that you have not paid. In other words, if you owe money to a person or company, they can obtain a court order directing your [bank]/[credit union] to take money out of your account to pay off your debt. If this happens, you cannot use that money in your account.

What has happened to my account?

On [date of account review], we researched your account and identified one or more Federal benefit payments deposited in the last 2 months. In most cases, Federal benefit payments are protected from garnishment. As required by Federal regulations, therefore, we have established a "protected amount" of funds that will remain available to you and that will not be [frozen/removed] from your account in response to the garnishment order.

(Conditional paragraph if funds have been frozen) Your account contained additional money that may not be protected from garnishment. As required by law, we have [placed a hold on/removed] these funds in the amount of $[amount frozen] and may have to turn these funds over to your creditor as directed by the garnishment order.

The chart below summarizes this information about your account(s):

ACCOUNT SUMMARY AS OF [DATE OF ACCOUNT REVIEW]

Account number	Amount in account	Amount protected	Amount subject to garnishment (now [frozen/removed])	Garnishment fee charged

(If the account holder has multiple accounts, add a row for each account.)

Please note that these amount(s) may be affected by deposits or withdrawals after the protected amount was calculated on [date of account review].

Do I need to do anything to access my protected funds?

You may use the "protected amount" of money in your account as you normally would. *There is nothing else that you need to do to make sure that the "protected amount" is safe.*

Who garnished my account?

The creditor who obtained a garnishment order against you is [name of creditor].

What types of Federal benefit payments are protected from garnishment?

In most cases, you have protections from garnishment if the funds in your account include one or more of the following Federal benefit payments:

- Social Security benefits
- Supplemental Security Income benefits
- Veterans benefits
- Railroad retirement benefits
- Railroad Unemployment Insurance benefits
- Civil Service Retirement System benefits
- Federal Employees Retirement System benefits

(Conditional section if funds have been frozen) What should I do if I think that additional funds in my account are from Federal benefit payments?

If you believe that additional funds in your account(s) are from Federal benefit payments and should not have been [frozen/removed], there are several things you can do.

(Conditional sentence if applicable for the jurisdiction) You can fill out a garnishment exemption form and submit it to the court.

You may contact the creditor that garnished your account and explain that additional funds are from Federal benefit payments and should be released back to you. *(Conditional sentence if contact information is in the garnishment order)* The creditor may be contacted at [contact information included in the garnishment order].

You may also consult an attorney (lawyer) to help you prove to the creditor who garnished your account that additional funds are from Federal benefit payments and cannot be taken. If you cannot afford an attorney, you can seek assistance from a free attorney or a legal aid society. (*Optional sentences)* [Name of State, local, or independent legal aid service] is an organization that provides free legal aid and can be reached at [contact information]. You can find information about other free legal aid programs at [insert "*http://www.lawhelp.org*" or other legal aid programs website].

(Optional section) How to contact [name of financial institution].

This notice contains all the information that we have about the garnishment order. However, if you have a question about your account, you may contact us at [contact number].

Appendix B to Part 212—Form of Notice of Right to Garnish Federal Benefits

The United States, or a State child support enforcement agency, certifying its right to garnish Federal benefits shall attach or include with a garnishment order the following Notice, on official organizational letterhead.

Information in brackets should be completed by the United States or a State child support enforcement agency, as applicable. Where the bracketed information indicates a choice of words, as indicated by a slash, the appropriate words should be selected from the options.

Notice of Right to Garnish Federal Benefits

Date: _____
[Garnishment Order Number]/[State Case ID]: _____

The attached garnishment order was [obtained by the United States, pursuant to the Federal Debt Collection Procedures Act, 28 U.S.C. § 3205, or the Mandatory Victims Restitution Act, 18 U.S.C. § 3613, or other Federal statute]/[issued by (name of the State child support enforcement agency), pursuant to authority to attach or seize assets of noncustodial parents in financial institutions in the State of (name of State), 42 U.S.C. § 666].

Accordingly, the garnishee is hereby notified that the procedures established under 31 CFR Part 212 for identifying and protecting Federal benefits deposited to accounts at financial institutions do not apply to this garnishment order.

The garnishee should comply with the terms of this order, including instructions for withholding and retaining any funds deposited to any account(s) covered by this order, pending further order of [name of the court]/[the name of the State child support enforcement agency].

Appendix C to Part 212—Examples of the Lookback Period and Protected Amount

The following examples illustrate this definition of *lookback period.*

Example 1: Account review performed same day garnishment order is served.

A financial institution receives garnishment order on Wednesday, March 17. The financial institution performs account review the same day on Wednesday, March 17. The lookback period begins on Tuesday, March 16, the date preceding the date of account review. The lookback period ends on Saturday, January 16, the corresponding date two months earlier.

Example 2: Account review performed the day after garnishment order is served.

A financial institution receives garnishment order on Wednesday, November 17. The financial institution performs account review next business day on Thursday, November 18. The lookback period begins on Wednesday, November 17, the date preceding the date of account review. The lookback period ends on Friday, September 17, the corresponding date two months earlier.

Example 3: No corresponding date two months earlier.

A financial institution receives garnishment order on Tuesday, August 30. The financial institution performs the account review two business days later on Thursday, September 1. The lookback period begins on Wednesday, August 31, the date preceding the date of account review. The lookback period ends on Wednesday, June 30, the last date of the month two months earlier, since June 31 does not exist to correspond with August 31.

Example 4: Weekend between receipt of garnishment order and account review.

A financial institution receives garnishment order on Friday, December 10. The financial institution performs the account review two business days later on Tuesday, December 14. The lookback period begins on Monday, December 13, the date preceding the date of account review. The lookback period ends on Wednesday, October 13, the corresponding date two months earlier.

The following examples illustrate the definition of *protected amount.*

Example 1: Account balance less than sum of benefit payments.

A financial institution receives a garnishment order against an account holder for $2,000 on May 20. The date of account review is the same day, May 20, when the opening balance in the account is $1,000. The lookback period begins on May 19, the date preceding the date of account review, and ends on March 19, the corresponding date two months earlier. The account review shows that two Federal benefit payments were deposited to the account during the lookback period totaling $2,500, one for $1,250 on Friday, April 30 and one for $1,250 on Tuesday, April 1. Since the $1,000 balance in the account at the open of business on the date of account review is less than the $2,500 sum of benefit payments posted to the account during the lookback period, the financial institution establishes the protected amount at $1,000.

Example 2: Three benefit payments during lookback period.

A financial institution receives a garnishment order against an account holder for $8,000 on December 2. The date of account review is the same day, December 2, when the opening balance in the account is $5,000. The lookback period begins on December 1, the date preceding the date of account review, and ends on October 1, the corresponding date two months earlier. The account review shows that three Federal benefit payments were deposited to the account during the lookback period totaling $4,500, one for $1,500 on December 1, another for $1,500 on November 1, and a third for $1,500 on October 1. Since the $4,500 sum of the three benefit payments posted to the account during the lookback period is less than the $5,000 balance in the account at the open of business on the date of account review, the financial institution establishes the protected amount at $4,500 and seizes the remaining $500 in the account consistent with State law.

Example 3: Intraday transactions.

A financial institution receives a garnishment order against an account holder for $4,000 on Friday, September 10. The date of account review is Monday, September 13, when the opening balance in the account is $6,000. A cash withdrawal for $1,000 is processed after the open of business on September 13, but before the financial institution has performed the account review, and the balance in the account is $5,000 when the financial institution initiates an automated program to conduct the account review. The lookback period begins on Sunday, September 12, the date preceding the date of account review, and ends on Monday, July 12, the corresponding date two months earlier. The account review shows that two Federal benefit payments were deposited to the account during the lookback period totaling $3,000, one for $1,500 on Wednesday, July 21, and the other for $1,500 on Wednesday, August 18. Since the $3,000 sum of the two benefit payments posted to the account during the lookback period is less than the $6,000 balance in the account at the open of business on the date of account review, the financial institution establishes the protected amount at $3,000 and, consistent with State law, freezes the $2,000 remaining in the account after the cash withdrawal.

Example 4: Benefit payment on date of account review.

A financial institution receives a garnishment order against an account holder for $5,000 on Thursday, July 1. The date of account review is the same day, July 1, when the opening balance in the account is $3,000, and reflects a Federal benefit payment of $1,000 posted that day. The lookback period begins on Wednesday, June 30, the date preceding the date of account review, and ends on Friday, April 30, the corresponding date two months earlier. The account review shows that two Federal benefit payments were deposited to the account during the lookback period totaling $2,000, one for $1,000 on Friday, April 30 and one for $1,000 on Tuesday, June 1. Since the $2,000 sum of the two benefit payments posted to the account during the lookback period is less than the $3,000 balance in the account at the open of business on the date of account review, notwithstanding the third Federal benefit payment posted on the date of account review, the financial institution establishes the protected amount at $2,000 and places a hold on the remaining $1,000 in the account in accordance with State law.

Example 5: Account co-owners with benefit payments.

A financial institution receives a garnishment order against an account holder for $3,800 on March 22. The date of account review is the same day, March 22, when the opening balance in the account is $7,000. The lookback period begins on March 21, the date preceding the date of account review, and ends on January 21, the corresponding date two months earlier. The account review shows that four Federal benefit payments were deposited to the account during the lookback period totaling $7,000. Two of these benefit payments, totaling $3,000, were made to the account holder against whom the garnishment order was issued. The other two payments, totaling $4,000, were made to a co-owner of the account. Since the financial institution must perform the account review based only on the presence of benefit payments, without regard to the existence of co-owners on the account or payments to multiple beneficiaries or under multiple programs, the financial institution establishes the protected amount at $7,000, equal to the sum of the four benefit payments posted to the account during the lookback period. Since $7,000 is also the balance in the account on the date of account review, there are no additional funds in the account which can be frozen.

Social Security Administration

20 CFR Parts 404 and 416

Authority and Issuance

For the reasons set forth in the preamble, the Social Security Administration amends Parts 404 and 416 of Title 20 of the Code of Federal Regulations as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE

(1950–)

Subpart S—Payment Procedures

■ 1. The authority citation for subpart S of Part 404 continues to read as follows:

Authority: Secs. 205(a) and (n), 207, 702(a)(5) and 708(a) of the Social Security Act (42 U.S.C. 405(a) and (n), 407, 902(a)(5) and 909(a)).

■ 2. Add § 404.1821 to read as follows:

§ 404.1821 Garnishment of Payments After Disbursement.

(a) Payments that are covered by section 207 of the Social Security Act

and made by direct deposit are subject to 31 CFR part 212, Garnishment of Accounts Containing Federal Benefit Payments.

(b) This section may be amended only by a rulemaking issued jointly by the Department of Treasury and the agencies defined as a "benefit agency" in 31 CFR 212.3.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart E—Payment of Benefits, Overpayments, and Underpayments

■ 3. The authority citation for subpart E of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1147, 1601, 1602, 1611(c) and (e), and 1631(a)–(d) and (g) of the Social Security Act (42 U.S.C. 902(a)(5), 1320b–17, 1381, 1381a, 1382(c) and (e), and 1383(a)–(d) and (g)); 31 U.S.C. 3720A.

■ 4. Add § 416.534 to read as follows:

§ 416.534 Garnishment of Payments After Disbursement.

(a) Payments that are covered by section 1631(d)(1) of the Social Security Act and made by direct deposit are subject to 31 CFR part 212, Garnishment of Accounts Containing Federal Benefit Payments.

(b) This section may be amended only by a rulemaking issued jointly by the Department of Treasury and the agencies defined as a "benefit agency" in 31 CFR 212.3.

Department of Veterans Affairs

Authority and Issuance

For the reasons set forth in the preamble, the Department of Veterans Affairs amends Part 1 of Title 38 of the Code of Federal Regulations as follows:

PART 1—GENERAL PROVISIONS

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 38 U.S.C. 501(a), and as noted in specific sections.

■ 2. Add § 1.1000 and a new undesignated center heading preceding the section to read as follows:

Procedures for Financial Institutions Regarding Garnishment of Benefit Payments After Disbursement

§ 1.1000 Garnishment of payments after disbursement.

(a) Payments of benefits due under any law administered by the Secretary that are protected by 38 U.S.C. 5301(a) and made by direct deposit to a financial institution are subject to 31 CFR part 212, Garnishment of Accounts Containing Federal Benefit Payments.

(b) This section may be amended only by a rulemaking issued jointly by the Department of the Treasury and the agencies defined as a "benefit agency" in 31 CFR 212.3.

Railroad Retirement Board

Authority and Issuance

For the reasons set forth in the preamble, the Railroad Retirement Board amends Part 350 of Title 20 of the Code of Federal Regulations as follows:

PART 350—GARNISHMENT OF BENEFITS PAID UNDER THE RAILROAD RETIREMENT ACT, THE RAILROAD UNEMPLOYMENT INSURANCE ACT, AND UNDER ANY OTHER ACT ADMINISTERED BY THE BOARD

■ 1. Revise the Authority citation to read as follows:

Authority: 15 U.S.C. 1673(b)(2); 42 U.S.C. 659; and 45 U.S.C. 231f(b)(5), 231m, 352(e), and 362(l).

■ 2. Add a new § 350.6 to read as follows:

§ 350.6. Garnishment of payments after disbursement.

Payments that are covered by 45 U.S.C. 231m or 45 U.S.C. 352(e) and that are made by direct deposit are subject to 31 CFR part 212, Garnishment of Accounts Containing Federal Benefit Payments. This section may be amended only by a rulemaking issued jointly by the Department of the Treasury and the agencies defined as a "benefit agency" in 31 CFR 212.3.

Office of Personnel Management

Authority and Issuance

For the reasons set forth in the preamble, the Office of Personnel Management amends part 831 and part 841 of Title 5 of the Code of Federal Regulations 1 as follows:

PART 831— RETIREMENT

■ 1. The authority citation for part 831 is revised to read as follows:

Authority: 5 U.S.C. 8347; Sec. 831.102 also issued under 5 U.S.C. 8334; Sec. 831.106 also issued under 5 U.S.C. 552a; Sec. 831.108 also issued under 5 U.S.C. 8336(d)(2); Sec. 831.114 also issued under 5 U.S.C. 8336(d)(2), and Sec. 1313(b)(5) of Pub. L. 107–296, 116 Stat. 2135; Secs. 831.115 and 831.116 also issued under 5 U.S.C. 8346(a); Sec. 831.201(b)(1) also issued under 5 U.S.C. 8347(g); Sec. 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); Sec. 831.201(g) also issued under Secs. 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; Sec. 831.201(g) also issued under Secs. 7(b) and (e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 831.201(i) also issued under Secs. 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 831.204 also issued under Sec. 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by Sec. 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 831.205 also issued under Sec. 2207 of Pub. L. 106–265, 114 Stat. 784; Sec. 831.206 also issued under Sec. 1622(b) of Pub. L. 104–106, 110 Stat. 515; Sec. 831.301 also issued under Sec. 2203 of Pub. L. 106–265, 114 Stat. 780; Sec. 831.303 also issued under 5 U.S.C. 8334(d)(2) and Sec. 2203 of Pub. L. 106–235, 114 Stat. 780; Sec. 831.502 also issued under 5 U.S.C. 8337; Sec. 831.502 also issued under Sec. 1(3), E.O. 11228, 3 CFR 1965–1965 Comp. p. 317; Sec. 831.663 also issued under Secs. 8339(j) and (k)(2); Secs. 831.663 and 831.664 also issued under Sec. 11004(c)(2) of Pub. L. 103–66, 107 Stat. 412; Sec. 831.682 also issued under Sec. 201(d) of Pub. L. 99–251, 100 Stat. 23; Sec. 831.912 also issued under Sec. 636 of Appendix C to Pub. L. 106–554, 114 Stat. 2763A–164; Subpart V also issued under 5 U.S.C. 8343a and Sec. 6001 of Pub. L. 100–203, 101 Stat. 1330–275; Sec. 831.2203 also issued under Sec. 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388–328.

■ 2. Add a new § 831.115 to Subpart A to read as follows:

§ 831.115 Garnishment of CSRS payments.

CSRS payments are not subject to execution, levy, attachment, garnishment or other legal process except as expressly provided by Federal law.

■ 3. Add a new § 831.116 to read as follows:

§ 831.116 Garnishment of payments after disbursement.

(a) Payments that are covered by 5 U.S.C. 8346(a) and made by direct deposit are subject to 31 CFR part 212, Garnishment of Accounts Containing Federal Benefit Payments.

(b) This section may be amended only by a rulemaking issued jointly by the Department of the Treasury and the agencies defined as a "benefit agency" in 31 CFR 212.3.

PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

■ 1. The authority citation for part 841 is revised to read as follows:

Authority: 5 U.S.C. 8461; Sec. 841.108 also issued under 5 U.S.C. 552a; Secs. 841.110 and 841.111 also issued under 5 U.S.C. 8470(a); subpart D also issued under 5 U.S.C. 8423; Sec. 841.504 also issued under 5 U.S.C. 8422; Sec. 841.507 also issued under section 505 of Pub. L. 99–335; subpart J also issued under 5 U.S.C. 8469; Sec. 841.506 also issued under 5 U.S.C. 7701(b)(2); Sec. 841.508 also issued under section 505 of Pub. L. 99–335; Sec. 841.604 also issued under Title II, Pub. L. 106–265, 114 Stat. 780.

■ 2. Add new § 841.110 to read as follows:

§ 841.110 Garnishment of FERS payments.

FERS payments are not subject to execution, levy, attachment, garnishment or other legal process except as expressly provided by Federal law.

■ 3. Add a new § 841.111 to read as follows:

§ 841.111 Garnishment of payments after disbursement.

(a) Payments that are covered by 5 U.S.C. 8470(a) and made by direct deposit are subject to 31 CFR part 212, Garnishment of Accounts Containing Federal Benefit Payments.

(b) This section may be amended only by a rulemaking issued jointly by the Department of the Treasury and the agencies defined as a "benefit agency" in 31 CFR part 212.

By the Department of the Treasury.

Dated: February 3, 2011.

Richard L. Gregg,

Fiscal Assistant Secretary.

By the Social Security Administration.

Michael J. Astrue,

Commissioner of Social Security.

Dated: January 31, 2011.

By the Department of Veterans Affairs.

John R. Gingrich,

Chief of Staff.

By the Railroad Retirement Board.

Beatrice Ezerski,

Secretary to the Board.

By the Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–3782 Filed 2–22–11; 8:45 am]

BILLING CODE 4810–25–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 115

RIN 3245–AG14

Surety Bond Guarantee Program; Timber Sales

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is issuing this final rule to amend its Surety Bond Guarantee Program rules to guarantee bid and performance bonds for timber sale contracts awarded by the Federal Government or other public and private landowners.

DATES: This rule is effective on March 25, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Brannan, Office of Surety Guarantees, 202–205–6545, e-mail: *Barbara.brannan@sba.gov.*

SUPPLEMENTARY INFORMATION: SBA guarantees bonds for small contractors who cannot obtain surety bonds through the traditional commercial market. SBA's guarantee provides surety companies with the incentive to bond these contractors, enabling them to bid on and be awarded more contracts. The Surety Bond Guarantee (SBG) Program consists of the Prior Approval Program and the Preferred Surety Bond (PSB) Program. In the Prior Approval Program, each bond guarantee application must be submitted to SBA individually for approval, while PSB sureties have the delegated authority to issue, monitor, and service bonds without SBA's prior approval.

The Forest Service of the U.S. Department of Agriculture (USDA), and other public and private entities that manage forests, may permit the harvesting of timber in exchange for the payment of an agreed upon sum of money. To bid on these timber sale contracts, the USDA and these other public and private entities may require the bidder to obtain a bond to ensure satisfactory compliance with the contract terms and conditions associated with forest management, such as the protection of natural resources, soil, water, erosion control and road maintenance. Unlike the typical contract for supplies or services where the Obligee pays the Principal for providing supplies or rendering services, the Principal in the timber sale contract (the harvester of the timber) pays the Obligee (*e.g.* the Federal Government) for the right to cut the designated trees. However, under the current definition of "Contract" in 13 CFR 115.10, a contract for which SBA may issue a Surety Bond Guarantee cannot include a contract requiring any payment by the Principal to the Obligee. This final rule amends the definition of "Contract" to permit SBA to issue bid or performance bond guarantees for contracts that require the Principal to pay the Obligee for harvesting timber or other forest products, such as biomass. This change applies to contracts involving forests managed by the U.S. Forest Service as well as other public and private entities.

Discussion of Public Comments

On October 15, 2010, SBA published the notice of proposed rulemaking with request for comments on this change to the SBG Program in the **Federal Register**. *See* 75 FR 63419. SBA received comments from four submitters before the comment period ended on November 15, 2010 and from two submitters after the comment period ended. SBA has considered all of the comments received.

Three submitters stated that small businesses have difficulty or are unable to obtain bonding to bid on timber sale contracts. They expressed support for the proposed rule because it will enable small contractors to obtain bonding more easily, making it possible for them to bid against larger companies and compete for timber sale contracts.

One submitter expressed concern that the fee assessed by SBA on the Principal for the bond may make it difficult or economically unfeasible for them to obtain timber sale contracts. SBA periodically reviews the program fees charged, which are established in the amounts SBA deems reasonable and necessary, in accordance with § 411(h) of the Small Business Investment Act of 1958.

One submitter suggested that SBA paperwork requirements, specifically the submission of SBA Form 990, Surety Bond Guarantee Agreement, with each bond could be cumbersome for timber sale bonds. However, SBA is not requiring any additional paperwork for timber sale bonds, and electronic application submission and processing is available in the Prior Approval Program. In addition, PSB sureties do not have to submit SBA Form 990 for any bond. The same submitter suggested that there is limited access to participating sureties in rural areas. SBA admitted six new sureties to the program in fiscal year 2010 and is working to expand access to the program.

Lastly, one submitter suggested that SBA clarify its intent to exclude payment bonds from eligibility by changing the definition of Payment Bond. SBA agrees that payment bonds in connection with timber sale contracts should be excluded, as the guarantee on payment bonds under the SBG Program was not intended to reimburse the Obligee for amounts owed the Obligee by the Principal, but to cover the claims caused by the Principal's failure to pay others furnishing supplies and materials for use in the performance of the Contract. SBA has added language to the rule to make it clear that the exception for timber sale contracts applies only to bid and performance bonds. Bid bonds are included because a small contractor may be required to submit a bid bond with its bid for the timber sale contract.

The two comments that were received after the deadline have also been considered by SBA. Both submitters suggested that the regulation be amended to include contracts for the sale of biomass products to increase the number of contracts for which small businesses could obtain bonding. SBA agrees and has modified the definition of "Contract" in this final rule to clarify that this change applies to contracts for the sale of timber as well as other forest products, including biomass.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule does not constitute a significant regulatory action under Executive Order 12866. This rule is also not a major rule under the Congressional Review Act.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this final rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purpose of Executive Order 13132, Federalism, SBA has determined that this final rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C., Ch. 35

SBA has determined that this final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

Regulatory Flexibility Act, 5 U.S.C. 601–612

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small non-profit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Within the meaning of RFA, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities. There are seventeen Sureties that participate in the SBA program, and no part of this final rule would impose any significant additional cost or burden on them.

List of Subjects in 13 CFR Part 115

Claims, Small businesses, Surety bonds.

For the reasons stated in the preamble, the Small Business Administration amends 13 CFR Part 115 as follows:

PART 115—SURETY BOND GUARANTEE

■ 1. The authority citation for part 115 continues to read as follows:

Authority: 5 U.S.C. app. 3, 15 U.S.C. 687b, 687c, 694b, 694b note, Pub. L. 106–554; and Pub. L. 108–447, Div. K, Sec. 203.

■ 2. Amend § 115.10 by revising the third sentence of the definition of "Contract" to read as follows.

§ 115.10 Definitions.

* * * * *

Contract * * * A contract does not include a permit, subdivision contract, lease, land contract, evidence of debt, financial guarantee (e.g., a contract requiring any payment by the Principal to the Obligee, except for contracts in connection with bid and performance bonds for the sale of timber and/or other forest products, such as biomass, that require the Principal to pay the Obligee), warranty of performance or efficiency, warranty of fidelity, or release of lien (other than for claims under a guaranteed bond). * * *

* * * * *

Karen G. Mills,

Administrator.

[FR Doc. 2011–4010 Filed 2–22–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0892; Directorate Identifier 2010–NE–32–AD; Amendment 39–16615; AD 2011–05–06]

RIN 2120–AA64

Airworthiness Directives; Thielert Aircraft Engines GmbH Models TAE 125–02–99 and TAE 125–02–114 Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Service experience has shown that fracture of the timing chain has occurred due to chain wear. This condition, if not corrected, could lead to in-flight cases of engine shutdown.

We are issuing this AD to prevent engine in-flight shutdown leading to loss of control of the airplane by requiring life limits for the timing chain.

DATES: This AD becomes effective March 30, 2011.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *alan.strom@faa.gov;* telephone (781) 238–7143; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 28, 2010 (75 FR 66342). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Service experience has shown that fracture of the timing chain has occurred due to chain

wear. This condition, if not corrected, could lead to in-flight cases of engine shutdown.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 112 engines installed on airplanes of U.S. registry. We also estimate that it will take about 8 work-hours per product to comply with this AD. The average labor rate is $85 per work-hour. Required parts will cost about $162 per engine. Based on these figures, we estimate the cost of the AD on U.S. operators to be $94,304.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (phone (800) 647–5527) is provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2011–05–06 Thielert Aircraft Engines GmbH: Amendment 39–16615. Docket No. FAA–2010–0892; Directorate Identifier 2010–NE–32–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 30, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Thielert Aircraft Engines GmbH models TAE 125–02–99 and TAE 125–02–114 reciprocating engines installed in, but not limited to, Cessna 172 and (Reims-built) F172 series (European Aviation Safety Agency (EASA) Supplemental Type Certificate (STC) No. EASA.A.S.01527); Piper PA–28 series (EASA STC No. EASA.A.S. 01632); APEX (Robin) DR 400 series (EASA STC No. A.S.01380); and Diamond Aircraft Industries Models DA 40, DA 42, and DA 42M NG airplanes.

Reason

(d) This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Service experience has shown that fracture of the timing chain has occurred due to chain wear. This condition, if not corrected, could lead to in-flight cases of engine shutdown.

We are issuing this AD to prevent engine in-flight shutdown leading to loss of control of the airplane by requiring life limits for the timing chain.

Actions and Compliance

(e) Unless already done, do the following actions.

Initial Replacement of Timing Chain

(1) For engines with serial numbers (S/Ns) listed in Table 1 of this AD, replace the timing chain within 600 flight hours-since-new, or no later than 55 flight hours after the effective date of this AD, whichever occurs later.

TABLE 1—S/NS OF ENGINES AFFECTED BY THE COMPLIANCE TIME IN PARAGRAPH (E)(1) OF THIS AD

02–02–01510 to 02–02–01514 inclusive
02–02–01518 to 02–02–01520 inclusive
02–02–01529
02–02–01717
02–02–01718
02–02–01720
02–02–01721
02–02–01727
02–02–01728
02–02–01730 to 02–02–01733 inclusive
02–02–01739 to 02–02–01752 inclusive

(2) For engines with S/Ns not listed in Table 1 of this AD, replace the timing chain within 910 flight hours-since-new, or no later than 55 flight hours after the effective date of this AD, whichever occurs later.

Repetitive Replacements of Timing Chains for All TAE 125–02–99 and TAE 125–02–114 Engines

(3) Thereafter, for all TAE 125–02–99 and TAE 125–02–114 engines, repetitively replace the timing chain within every additional 910 flight hours.

(4) Guidance on replacing the timing chain can be found in Thielert Aircraft Engines GmbH Service Bulletin No. TM TAE 125–1010 P1, Revision 2, dated May 26, 2010.

FAA AD Differences

(f) This AD differs from the MCAI and/or service information, which require initial replacement of the timing chain for the engines listed in paragraph (e)(1) above within either the next 110 flight hours or at the next maintenance, whichever occurs first, for those engines having accumulated between 500 and 600 flight hours time-since-new. The reason for the difference is to ensure that the compliance requirements for all engines in paragraph (e)(1) above are consistent.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) Refer to MCAI European Aviation Safety Agency AD 2010–0136, dated June 30, 2010, and Thielert Aircraft Engines GmbH Service Bulletin No. TM TAE 125–1010 P1, Revision 2, dated May 26, 2010, for related information. Contact Thielert Aircraft Engines GmbH, Platanenstrasse 14 D–09350, Lichtenstein, Germany, telephone: +49–37204–696–0; fax: +49–37204–696–55; e-mail: *info@centurion-engines.com,* for a copy of this service information.

(i) Contact Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *alan.strom@faa.gov;* telephone (781) 238–7143; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(j) None.

Issued in Burlington, Massachusetts, on February 16, 2011.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–3917 Filed 2–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0936; Airspace Docket No. 10–AEA–23]

Amendment of Class E Airspace and Revocation of Class E Airspace; Easton, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E surface airspace and airspace 700 feet above the surface, and removes Class E airspace designated as an extension to Class D airspace at Easton, MD. The Easton Non-Directional Beacon (NDB) has been decommissioned and new Standard Instrument Approach Procedures (SIAPs) have been developed for Easton Airport/Newnam Field. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, May 5, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Richard Horrocks, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P. O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5588.

SUPPLEMENTARY INFORMATION:

History

On October 22, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E surface airspace and airspace 700 feet above the surface, and remove Class E airspace designated as an extension to Class D airspace at Easton, MD (75 FR 65250) Docket No. FAA–2010–0936. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends the Class E surface airspace and Class E airspace extending upward from 700 feet above the surface to accommodate new SIAPs developed for Easton Airport/Newnam Field, Easton, MD, as the Easton NDB has been decommissioned. This eliminates the need for Class E airspace designated as an extension to Class D surface area, and, therefore, will be removed for the continued safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace at Easton, MD.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, effective September 15, 2010, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

AEA MD E2 Easton, MD [AMENDED]

Easton Airport/Newnam Field, MD
(Lat. 38°48′15″ N., long. 76°04′08″ W.)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.0-mile radius of the Easton Airport/Newnam Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D Surface Area.

* * * * *

AEA MD E4 Easton, MD [REMOVED]

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

AEA MD E5 Easton, MD [AMENDED]

Easton Airport/Newnam Field, MD
(Lat. 38°48′15″ N., long. 76°04′08″ W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 6.5-mile radius of the Easton Airport/Newnam Field.

Issued in College Park, Georgia, on February 11, 2011.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2011–3940 Filed 2–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1010; Airspace Docket No. 10–AEA–24]

Amendment of Class E Airspace; Charleston, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E Airspace at Charleston, WV, to accommodate the additional airspace needed for new Standard Instrument Approach Procedures (SIAPs) developed at Yeager Airport. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, May 5, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Richard Horrocks, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P. O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5588.

SUPPLEMENTARY INFORMATION:

History

On October 22, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace to accommodate new SIAPs at Yeager Airport, Charleston, WV (75 FR 65251). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface at Charleston, WV, to accommodate new standard instrument approach procedures developed at Yeager Airport. This action is necessary for the safety and management of IFR operations at the airports.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace at Charleston, WV.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, effective September 15, 2010, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

AEA WV E5 Charleston, WV [AMENDED]

Yeager Airport, WV
(Lat. 38° 22′ 23″ N., long. 81° 35′ 35″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Yeager Airport and within 8 miles northwest and 4 miles southeast of the 048° bearing from the airport extending from the 7-mile radius to 21.2 miles northeast of the airport.

Issued in College Park, Georgia, on February 3, 2011.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2011–3939 Filed 2–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0937; Airspace Docket No. 10–ASO–35]

Amendment of Class E Airspace; Henderson, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects errors in the legal description of a final rule published in the **Federal Register** on December 20, 2010 that amends Class E airspace at Henderson, KY.

DATES: Effective 0901 UTC, March 10, 2011.

FOR FURTHER INFORMATION CONTACT: Richard Horrocks, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P. O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5588.

SUPPLEMENTARY INFORMATION:

History

Federal Register Docket No. FAA–2010–0937, Airspace Docket No. 10–ASO–35, published on December 20, 2010 (75 FR 79294), amends Class E airspace at Henderson City-County Airport, Henderson, KY. A typographical error was made in the regulatory text concerning the degree radial used; reference to the Pocket City VORTAC, Evansville, IN, will be removed; and the direction of the airspace extension corrected. This action will correct these errors. The airspace designation and regulatory text will be rewritten for clarity.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, on page 79294, column 3, line 62, the description is corrected to read:

ASO KY E5 Henderson, KY [Corrected]

Henderson City-County Airport, KY
(Lat. 37°48′ 28″ N., long. 87°41′ 09″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Henderson City-County Airport and within 1.0 miles each side of the 333° bearing extending from the 6.5-mile radius of the Henderson City-County Airport to 8.2 miles northwest of the airport.

Issued in College Park, Georgia, on February 11, 2011.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2011–3944 Filed 2–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0815; Airspace Docket No. 10–ANE–107]

Removal and Amendment of Class E Airspace, Oxford, CT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Class E surface airspace as an extension to Class D airspace, and amends Class E airspace extending upward from 700 feet at Oxford, CT. Decommissioning of the Waterbury Non-Directional Beacon (NDB) at the Waterbury-Oxford airport has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, May 5, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Richard Horrocks, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5588.

SUPPLEMENTARY INFORMATION:

History

On August 26, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to remove and amend Class E airspace at Waterbury-Oxford Airport, Oxford, CT (75 FR 52484). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in Paragraph 6004 and 6005, respectively, of FAA order 7400.9U, signed August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 removes the Class E surface airspace as an extension to Class D airspace and amends the description of the Class E airspace extending upward 700 feet above the surface at Oxford-Waterbury Airport, Oxford, CT. The Waterbury NDB has been decommissioned and reference to the navigation aid is being removed from the airspace description for the safety and management of IFR operations at Waterbury-Oxford Airport.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It therefore, (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in subtitle VII, part, A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would amend controlled airspace at Waterbury-Oxford Airport, Oxford, CT.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND CLASS E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, signed August 18, 2010, effective September 15, 2010, is amended as follows:

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D Surface Area

* * * * *

ANE CT E4 Oxford, CT [REMOVED]

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 Feet or More Above the Surface of the Earth.

* * * * *

ANE CT E5 Oxford, CT [AMENDED]

Waterbury-Oxford Airport, CT
(Lat. 41°28′43″ N., long. 73°08′07″ W.)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of the Waterbury-Oxford Airport.

Issued in College Park, Georgia, on February 11, 2011.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2011–3943 Filed 2–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0084]

Drawbridge Operation Regulation; Chickasaw Creek, AL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, issued a temporary deviation from the regulation governing the operation of the CSX Railroad Swing Span Bridge across Chickasaw Creek, mile 0.0, in Mobile, Alabama. The deviation is necessary to replace railroad ties on the bridge. This deviation allows the bridge to remain closed for eight hours on March 8, 2011.

DATES: This deviation is effective from 7 a.m. until 3 p.m. on Tuesday, March 8, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0084 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0084 in the "Keyword" box and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail David Frank, Bridge Administration Branch; telephone 504–671–2128, e-mail David.m.frank@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: CSX Transportation requested a temporary deviation from the operating schedule for the Swing Span Bridge across Chickasaw Creek, mile 0.0, in Mobile, Alabama. The bridge has a vertical clearance of 6 feet above mean high water in the closed-to-navigation position and unlimited in the open-to-navigation position.

In accordance with 33 CFR 117.5, the bridge currently opens on signal for the passage of vessels. This deviation allows the bridge to remain closed to navigation from 7 a.m. until 3 p.m. on Tuesday, March 8, 2011. At all other times, the bridge will open on signal for the passage of vessels.

The closure is necessary in order to change out railroad lift rails on the bridge. This maintenance is essential for the continued operation of the bridge. Notices will be published in the Eighth Coast Guard District Local Notice to Mariners and will be broadcast via the Coast Guard Broadcast Notice to Mariners System.

Navigation on the waterway consists mainly of tugs with tows and ships. Coordination between the Coast Guard and the waterway users determined that there should not be any significant effects on these vessels. There are no alternate routes available to vessel traffic. The bridge will not be able to open for emergencies.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 9, 2011.

David M. Frank,

Bridge Administrator.

[FR Doc. 2011–3955 Filed 2–22–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 88

RIN 0991–AB76

Regulation for the Enforcement of Federal Health Care Provider Conscience Protection Laws

AGENCY: Office of the Secretary, HHS.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services issues this final rule which provides that enforcement of the federal statutory health care provider conscience protections will be handled by the Department's Office for Civil Rights, in conjunction with the Department's funding components. This Final Rule rescinds, in part, and revises, the December 19, 2008 Final Rule entitled "Ensuring That Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law" (the "2008 Final Rule"). Neither the 2008 final rule, nor this final rule, alters the statutory protections for individuals and health care entities under the federal health care provider conscience protection statutes, including the Church Amendments, Section 245 of the Public Health Service Act, and the Weldon Amendment. These federal statutory health care provider conscience protections remain in effect.

DATES: This rule is effective March 25, 2011.

FOR FURTHER INFORMATION CONTACT: Georgina Verdugo, Director, Office for Civil Rights, Department of Health and Human Services, 202–619–0403, Room F515, Hubert E. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Department supports clear and strong conscience protections for health care providers who are opposed to performing abortions. While Federal health care provider conscience statutes have been in effect for decades, the Department has received comments suggesting that the 2008 final rule attempting to clarify the Federal health care provider conscience statutes has instead led to greater confusion. The comments received suggested that there is a need to increase outreach efforts to make sure providers and grantees are aware of these statutory protections. It is also clear that the Department needs to have a defined process for health care providers to seek enforcement of these protections.

The Department seeks to strengthen existing health care provider conscience statutes by retaining that part of the 2008 Final Rule that established an enforcement process. At the same time, this Rule rescinds those parts of the 2008 Final Rule that were unclear and potentially overbroad in scope. This partial rescission of the 2008 Final Rule does not alter or affect the federal statutory health care provider conscience protections.

Finally, the Department is beginning an initiative designed to increase the awareness of health care providers about the protections provided by the health care provider conscience statutes, and the resources available to providers who believe their rights have been violated. The Department's Office for Civil Rights will lead this initiative, and will collaborate with the funding components of the Department to determine how best to inform health care providers and grantees about health care conscience protections, and the new process for enforcing those protections.

II. Background

Statutory Background

The Church Amendments, Section 245 of the Public Health Service Act, and the Weldon Amendment, collectively known as the "federal health care provider conscience protection statutes," prohibit recipients of certain federal funds from discriminating against certain health care providers based on their refusal to participate in health care services they find religiously or morally objectionable. Most of these statutory protections have existed for decades. Additionally, the Patient Protection and Affordable Care Act, Public Law 111–148, 124 Stat. 119 (2010), as amended by Health Care and Education Reconciliation Act of 2010, Public Law 111–152, 124 Stat. 1029 (2010) (collectively referred to as the "Affordable Care Act") includes new health care provider conscience protections within the health insurance exchange system.

Conscience Clauses/Church Amendments [42 U.S.C. 300a–7]

The conscience provisions contained in 42 U.S.C. 300a–7 (collectively known as the "Church Amendments") were enacted at various times during the 1970s to make clear that receipt of Federal funds did not require the recipients of such funds to perform abortions or sterilizations. The first conscience provision in the Church Amendments, 42 U.S.C. 300a–7(b), provides that the receipt by an individual or entity of any grant, contract, loan, or loan guarantee under certain statutes implemented by the Department of Health and Human Services does not authorize a court, public official, or other public authority to require:

1. The individual to perform or assist in a sterilization procedure or an abortion, if it would be contrary to the individual's religious beliefs or moral convictions;

2. The entity to make its facilities available for sterilization procedures or abortions, if the performance of sterilization procedures or abortions in the facilities is prohibited by the entity on the basis of religious beliefs or moral convictions; or

3. The entity to provide personnel for the performance or assistance in the performance of sterilization procedures or abortions, if it would be contrary to the religious beliefs or moral convictions of such personnel.

The second conscience provision in the Church Amendments, 42 U.S.C. 300a–7(c)(1), extends protections to personnel decisions and prohibits any entity that receives a grant, contract, loan, or loan guarantee under certain Department-implemented statutes from discriminating against any physician or other health care personnel in employment, promotion, termination of employment, or the extension of staff or other privileges because the individual "performed or assisted in the performance of a lawful sterilization procedure or abortion, because he refused to perform or assist in the performance of such a procedure or abortion on the grounds that his performance or assistance in the performance of the procedure or abortion would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions respecting sterilization procedures or abortions."

The third conscience provision, contained in 42 U.S.C. 300a–7(c)(2), goes beyond abortion and sterilization and prohibits any entity that receives a grant or contract for biomedical or behavioral research under any program administered by the Department from discriminating against any physician or other health care personnel in employment, promotion, termination of employment, or extension of staff or other privileges "because he performed or assisted in the performance of any lawful health service or research activity, because he refused to perform or assist in the performance of any such service or activity on the grounds that his performance or assistance in the performance of such service or activity would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions respecting any such service or activity."

The fourth conscience provision, 42 U.S.C. 300a–7(d), provides that "[n]o individual shall be required to perform or assist in the performance of any part of a health service program or research activity funded in whole or in part under a program administered by [the Department] if his performance or assistance in the performance of such part of such program or activity would be contrary to his religious beliefs or moral convictions."

The final conscience provision contained in the Church Amendments, 42 U.S.C. 300a–7(e), prohibits any entity that receives a grant, contract, loan, loan guarantee, or interest subsidy under certain Departmentally implemented statutes from denying admission to, or otherwise discriminating against, "any applicant (including applicants for internships and residencies) for training or study because of the applicant's reluctance, or willingness, to counsel, suggest, recommend, assist, or in any way participate in the performance of abortions or sterilizations contrary to or

consistent with the applicant's religious beliefs or moral convictions."

Public Health Service Act Sec. 245 [42 U.S.C. 238n]

Enacted in 1996, section 245 of the Public Health Service Act (PHS Act) prohibits the federal government and any state or local government receiving federal financial assistance from discriminating against any health care entity on the basis that the entity:

1. Refuses to undergo training in the performance of induced abortions, to require or provide such training, to perform such abortions, or to provide referrals for such training or such abortions;

2. Refuses to make arrangements for such activities; or

3. Attends (or attended) a post-graduate physician training program, or any other program of training in the health professions, that does not (or did not) perform induced abortions or require, provide, or refer for training in the performance of induced abortions, or make arrangements for the provision of such training.

For the purposes of this protection, the statute defines "financial assistance" as including, "with respect to a government program," "governmental payments provided as reimbursement for carrying out health-related activities." In addition, PHS Act sec. 245 requires that, in determining whether to grant legal status to a health care entity (including a state's determination of whether to issue a license or certificate), the federal government and any state or local government receiving federal financial assistance shall deem accredited any postgraduate physician training program that would be accredited, but for the reliance on an accrediting standard that, regardless of whether such standard provides exceptions or exemptions, requires an entity:

1. To perform induced abortions; or

2. To require, provide, or refer for training in the performance of induced abortions, or make arrangements for such training.

Weldon Amendment

The Weldon Amendment, originally adopted as section 508(d) of the Labor-HHS Division (Division F) of the 2005 Consolidated Appropriations Act, Public Law 108–447, 118 Stat. 2809, 3163 (Dec. 8, 2004), has been readopted (or incorporated by reference) in each subsequent HHS appropriations act. Title V of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2006, Public Law 109–149, Sec. 508(d), 119 Stat. 2833, 2879–80 (Dec. 30, 2005); Revised Continuing Appropriations Resolution of 2007, Public Law 110–5, Sec. 2, 121 Stat. 8, 9 (Feb. 15, 2007); Consolidated Appropriations Act, 2008, Public Law 110–161, Div. G, Sec. 508(d), 121 Stat. 1844, 2209 (Dec. 26, 2007); Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Public Law 110–329, Div. A, Sec. 101, 122 Stat. 3574, 3575 (Sept. 30, 2008); Consolidated Appropriations Act, 2010, Public Law 111–117, Div. D, Sec. 508(d), 123 Stat. 3034, 3279–80 (Dec. 16, 2009). The Weldon Amendment provides that "[n]one of the funds made available in this Act [making appropriations for the Departments of Labor, Health and Human Services, and Education] may be made available to a Federal agency or program, or to a state or local government, if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions." It also defines "health care entity" to include "an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or plan."

Affordable Care Act

The Affordable Care Act includes new health care provider conscience protections within the health insurance Exchanges. Section 1303(b)(4) of the Act provides that "No qualified health plan offered through an Exchange may discriminate against any individual health care provider or health care facility because of its unwillingness to provide, pay for, provide coverage of, or refer for abortions." Like the other statutory health care provider conscience protections, this provision of law does not require rulemaking to take effect, and continues to apply notwithstanding this partial rescission of the 2008 Final Rule.

A recent Executive Order affirms that under the Affordable Care Act, longstanding federal health care provider conscience laws remain intact, and new protections prohibit discrimination against health care facilities and health care providers based on their unwillingness to provide, pay for, provide coverage of, or refer for abortions. Executive Order 13535, "Ensuring Enforcement and Implementation of Abortion Restrictions in the Patient Protection and Affordable Care Act" (March 24, 2010).

Regulatory Background

No regulations were required or necessary for the conscience protections contained in the Church Amendments, PHS Act, sec. 245, and the Weldon Amendment to take effect. Nevertheless, on August 26, 2008, nearly forty years after enactment of the Church Amendments, the Department issued a proposed interpretive rule entitled "Ensuring that Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law" (73 FR 50274).

In the preamble to the 2008 Final Rule, the Department concluded that regulations were necessary in order to:

1. Educate the public and health care providers on the obligations imposed, and protections afforded, by Federal law;

2. Work with state and local governments and other recipients of funds from the Department to ensure compliance with the nondiscrimination requirements embodied in the Federal health care provider conscience protection statutes;

3. When such compliance efforts prove unsuccessful, enforce these nondiscrimination laws through the various Department mechanisms, to ensure that Department funds do not support coercive or discriminatory practices, or policies in violation of federal law; and

4. Otherwise take an active role in promoting open communication within the health care industry, and between providers and patients, fostering a more inclusive, tolerant environment in the health care industry than may currently exist.

("Ensuring That Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law," 73 FR 78072, 78074, 45 CFR part 88 (Dec. 19, 2008)).

The 2008 Final Rule was published in the **Federal Register** on December 19, 2008. The Rule contained definitions of terms used in the federal health care provider conscience statutes, discussed their applicability, noted the prohibitions and requirements of the statutes, and created an enforcement mechanism. The 2008 Final Rule also imposed a new requirement that all recipients and subrecipients of Departmental funds had to submit written certification that they would operate in compliance with the provider conscience statutes. This new

requirement was based on a concern that there was a lack of knowledge in the health care community regarding the rights and obligations created by the federal health care provider conscience protection statutes. The Department received a number of comments expressing concern that this new certification would impose a substantial burden. The 2008 Final Rule went into effect on January 20, 2009 except that its certification requirement never took effect, as it was subject to the information collection approval process under the Paperwork Reduction Act, which was never completed.

Pending Litigation

In a consolidated action filed in the U.S. District Court for the District of Connecticut, eight states and several organizations challenged and sought to enjoin enforcement of the 2008 Final Rule by the Department. According to plaintiffs, in promulgating the 2008 Final Rule, HHS exceeded its statutory authority, violated the Administrative Procedure Act (APA) by failing to respond adequately to public comments, and conditioned the receipt of federal funds on compliance with vague and overly broad regulations. The Court granted a stay of all proceedings in this litigation pending the issuance of this Final Rule. *Connecticut* v. *United States,* No. 3:09–CV–054–RNC (D. Conn).

III. Proposed Rule

On March 10, 2009, the Department proposed rescinding, in its entirety, the 2008 Final Rule entitled "Ensuring That Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law" (74 FR 10207). The Department sought public comment in order to determine whether or not to rescind the 2008 Final Rule in part or in its entirety. In particular, the Department sought comment addressing the following:

1. Information, including specific examples where feasible, addressing the scope and nature of the problems giving rise to the need for federal rulemaking and how the current rule would resolve those problems;

2. Information, including specific examples where feasible, supporting or refuting allegations that the 2008 Final Rule reduces access to information and health care services, particularly by low-income women;

3. Comment on whether the 2008 Final Rule provides sufficient clarity to minimize the potential for harm resulting from any ambiguity and confusion that may exist because of the rule; and

4. Comment on whether the objectives of the 2008 Final Rule might also be accomplished through non-regulatory means, such as outreach and education.

IV. Comments on the Proposed Rule

A. Scope of Comments

The Department received more than 300,000 comments addressing its notice of proposed rulemaking proposing to rescind in its entirety the 2008 Final Rule. A wide range of individuals and organizations, including private citizens, health care workers, health care providers, religious organizations, patient advocacy groups, professional organizations, universities and research institutions, consumer organizations, state and local governments, and members of Congress, submitted comments regarding the notice of proposed rulemaking. The large number of comments received covered a wide variety of issues and points of view responding to the Department's request for comments on the four issues mentioned above, and the Department reviewed and analyzed all of the comments. The overwhelming majority of comments, both in support of and against rescission of the 2008 Final Rule, were form letters organized by various groups. In this section, which provides an overview of the comments received, and in the following sections, which provide a more detailed response to these comments, we respond to comments by issue, rather than by individual comment, as necessitated by the number of comments received and by the issues posed by them.

More than 97,000 individuals and entities submitted comments generally supportive of the proposal to rescind the 2008 Final Rule. Approximately one-fifth of the comments in favor of rescinding the 2008 Final Rule indicated that the 2008 Final Rule was not necessary, because existing law, including Title VII of the Civil Rights Act of 1964 and the federal health care provider conscience protection statutes, already provided protections to individuals and health care entities. An overwhelming number of these commenters expressed concern that the 2008 Final Rule unacceptably impacted patient rights and restricted access to health care and conflicted with federal law, state law, and other guidelines addressing informed consent. Additionally, commenters in support of rescinding the 2008 Final Rule contended that this new regulation imposed additional costs and administrative burdens, through the certification requirement, on health care providers when there are already sufficient laws on the books to protect their rights.

A large number of commenters also expressed concern that the 2008 Final Rule created ambiguities regarding the rights of patients, providers, and employers. Specifically, a number of commenters noted that the 2008 Final Rule created ambiguities that could expand the provider conscience protections beyond those established in existing federal statutes. Several groups commented that during rulemaking for the 2008 Final Rule, proponents failed to provide evidence that the long-standing statutory protections were insufficiently clear or that a problem currently exists for providers.

Nearly 187,000 comments expressed opposition to the Department's proposal to rescind the 2008 Final Rule. Nearly 112,000 of these comments stated that health care workers should not be required to perform procedures that violate their religious or moral convictions. Nearly 82,000 of the comments in opposition expressed concern that without the 2008 Final Rule, health care providers would be forced to perform abortions in violation of their religious or moral convictions. Many of these commenters also speculated that eliminating provider conscience protections would cause health care providers to leave the profession, which would reduce access to health care services.

Additionally, thousands of commenters suggested that rescinding the 2008 Final Rule would violate the First Amendment religious freedom rights of providers or the tenets of the Hippocratic Oath, and would impact the ethical integrity of the medical profession. While the Department carefully considered these comments, we do not specifically address them because this partial rescission does not alter or affect the existing federal statutory health care provider conscience protections.

Finally, numerous commenters opposing rescission of the 2008 Final Rule expressed concern that if the 2008 Final Rule was rescinded in its entirety, there would be no regulatory enforcement scheme to protect the rights afforded to health care providers, including medical students, under the federal health care provider conscience protection statutes.

B. Comments Addressing Awareness and Enforcement

Need for Enforcement Mechanism

Comment: The Department received numerous comments against rescission of the 2008 Final Rule expressing concern that if the 2008 Final Rule were rescinded in its entirety, there would be no regulatory enforcement scheme to protect the rights afforded to health care providers, including medical students, under the Federal health care provider conscience protection statutes.

Response: The Department shares the concerns expressed in these comments, and agrees there must be a clear process for enforcement of the health care provider conscience protection statutes. While the longstanding Federal health care provider conscience protection statutes have provided protections for health care providers, there was no clear mechanism for a health care provider who believed his or her rights were violated to seek enforcement of those rights. To address these comments, this final rule retains the provision in the 2008 Final Rule that designates the Office for Civil Rights (OCR) of the Department of Health and Human Services to receive complaints of discrimination and coercion based on the Federal health care provider conscience protection statutes.

OCR will lead an initiative across the Department that will include staff from the Departmental programs that fund grants, in order to develop a coordinated investigative and enforcement process. OCR is revising its complaint forms to make it easier for health care providers to understand how to utilize the complaint process, and will coordinate the handling of complaints with the staff of the Departmental programs from which the entity, with respect to whom a complaint has been filed, receives funding (*i.e.,* Department funding component).

Enforcement of the statutory conscience protections will be conducted by staff of the Department funding component, in conjunction with the Office for Civil Rights, through normal program compliance mechanisms. If the Department becomes aware that a state or local government or an entity may have undertaken activities that may violate the statutory conscience protections, the Department will work with such government or entity to assist such government or entity to comply or come into compliance with such requirements or prohibitions. If, despite the Department's assistance, compliance is not achieved, the Department will consider all legal options, including termination of funding, return of funds paid out in violation of health care provider conscience protection provisions under 45 CFR parts 74, 92, and 96, as applicable.

Need for Education and Outreach

Comment: The Department's notice of proposed rulemaking for this final rule requested comment on the need for an education and outreach program in addition to the promulgation of a regulatory enforcement scheme. 74 FR 10207, 10210. The Department received many comments expressing concern about the lack of knowledge about the federal health care provider conscience protection statutes in the health care industry. Many commenters opposed to rescission related anecdotes of hospitals and other health care entities failing to respect the conscience rights of health care providers. The commenters opined that if the 2008 Final Rule was rescinded in its entirety, health care entities receiving federal funding would not honor the rights provided health care providers under the Federal health care provider conscience protection statutes.

Response: The Department is concerned about the number of comments it received that were opposed to rescission of the 2008 Final Rule based on a belief that rescission of the rule would abolish the long-standing statutory provider conscience protections as these comments reflect a lack of understanding that the statutory protections are in effect irrespective of Department regulations or the 2008 final rule. The Department believes it is important to provide outreach to the health care community about the Federal health care provider conscience protection statutes. To address this need, the Department's Office for Civil Rights will work with the funding components of the Department to determine how best to raise grantee and provider awareness of these longstanding statutory protections, and the newly created enforcement process.

The Department's Office for Civil Rights currently engages in outreach and education efforts and works closely with health care entities to educate them about all of the Federal authorities that the Office for Civil Rights enforces. The Office for Civil Rights will include information on the Federal health care provider conscience protection statutes in such outreach, and will also include information so that health care entities understand the new process for enforcement of the Federal health care provider conscience protection statutes. The Office for Civil Rights provides a Web portal for the receipt of complaints on its Web site. *See* Office for Civil Rights, U.S. Department of Health and Human Services, *How to File a Complaint* (2010) (*http://www.hhs.gov/ocr/civilrights/complaints/index.html*). Combining the above education and outreach programs with the enforcement provision in this final rule should ensure that providers can take advantage of these protections.

The Department is also amending its grant documents to make clear that recipients are required to comply with the federal health care provider conscience protection laws.

C. Comments Addressing the Underlying Statutes and Other Laws

Status of Underlying Statutory Conscience Protections

Comment: The Department received a large number of comments, both in favor of and in opposition to rescinding the 2008 Final Rule, which expressed concern regarding the effect of the 2008 Final Rule on protections for providers. Many commenters advocated leaving the final rule in place, stating that rescinding the 2008 Final Rule would eliminate the protections for providers established under the Federal health care provider conscience protection statutes. On the other hand, many commenters advocated rescission of the 2008 Final Rule based on the mistaken belief that its rescission would eliminate the ability of certain providers to refuse to provide requested medical services that were contrary to their moral or religious beliefs.

Response: These comments underscore the misconceptions that exist regarding the proposed partial rescission of the 2008 Final Rule, and highlight the need for continued education and training of health care providers regarding the longstanding statutory protections. The Federal health care provider conscience protection statutes, including the Church Amendments, the Section 245 of the PHS Act, and the Weldon Amendment, have long provided statutory protections for providers. Neither the 2008 Final Rule, nor this Final Rule, which rescinds, in part, and revises the 2008 Final Rule, alters the statutory protections for individuals and health care entities under the Federal health care provider conscience protection statutes. Departmental funding recipients must continue to comply with the Federal health care provider conscience protection statutes.

Interaction Between Provider Conscience Statutes and Other Federal Statutes

Comment: Several other comments raised questions and identified ambiguities with respect to the interaction between the 2008 Final Rule and statutes governing other Department programs, including: the Medicaid program, pursuant to Title XIX of the Social Security Act, 42 U.S.C. 1396–1396v (2006); the Community Health Centers program, pursuant to section 330 of the PHS Act, 42 U.S.C. 264(b)(2008); the Title X Family Planning program, pursuant to Title X of the Public Health Service Act, 42 U.S.C. 300–300a–6 (2006); and the Emergency Medical Treatment and Labor Act (EMTALA), 42 U.S.C. 1395dd (2003), as well as the federal civil rights statutes enforced by the Department in its programmatic settings, which include Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d (1964); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 (2002); Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12131–12134 (1990); and the Age Discrimination Act of 1975, 42 U.S.C. 6101–6107 (1998). Specifically, commenters expressed concern that the 2008 Final Rule conflicts with the requirements of these other Federal statutes.

Response: Health care entities must continue to comply with the long-established requirements of the statutes above governing Departmental programs. These statutes strike a careful balance between the rights of patients to access needed health care, and the conscience rights of health care providers. The conscience laws and the other federal statues have operated side by side often for many decades. As repeals by implication are disfavored and laws are meant to be read in harmony, the Department fully intends to continue to enforce all the laws it has been charged with administering. The Department is partially rescinding the 2008 final rule in an attempt to address ambiguities that may have been caused in this area. The approach of a case by case investigation and, if necessary, enforcement will best enable the Department to deal with any perceived conflicts within concrete situations.

Interaction With Title VII of the Civil Rights Act of 1964

Comment: Several comments raise questions about the overlap between the federal health care provider conscience protection statutes and the protections afforded under Title VII of the Civil Rights Act of 1964, as amended (Title VII), 42 U.S.C. 2000e *et seq.*.

Response: The relationship between the protections contained under the federal health care provider conscience protection statutes and the protections afforded under Title VII fall outside the scope of this final rule. Under the final rule, the Department's Office for Civil Rights (OCR) will continue to receive complaints alleging violations of the federal health care provider conscience protection statutes. The Equal Employment Opportunity Commission (EEOC) enforces Title VII, which prohibits employers—including health care providers—from discriminating against any applicant or employee in hiring, discipline, promotion, termination, or other terms and conditions of employment based on religious beliefs.

Guidance for handling complaints involving Title VII issues can be found in *Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Financial Assistance,* 29 CFR part 1691 (Aug. 4, 1989). The Procedures provide for coordination between the EEOC and other Federal departments for review, investigation, and resolution of employment discrimination complaints, including those based on religion.

Informed Consent

Comment: Many comments expressed concern that the 2008 Final Rule would prevent a patient from being able to give informed consent, because the health care provider might not advise the patient of all health care options.

Response: The doctrine of informed consent requires that a health care provider inform an individual patient of the risks and benefits of any health care treatment or procedure. In order to give informed consent, the patient must be able to understand and weigh the treatment or procedure's risks and benefits, and must understand available alternatives. Additionally, a patient must communicate his or her informed consent to the provider, which is most commonly done through a written document. State laws generally treat lack of informed consent as a matter of negligence on the part of the health care provider failing to disclose necessary information to the patient. Provider association and accreditation association guidelines set forth additional requirements on members and member entities.

We recognize that informed consent is crucial to the provision of quality health care services. The provider-patient relationship is best served by open communication of conscience issues surrounding the provision of health care services. The Department emphasizes the importance of and strongly encourages early, open, and respectful communication between providers and patients surrounding sensitive issues of health care, including the exercise of provider conscience rights, and alternatives that are not being recommended as a result.

Partial rescission of the 2008 Final Rule should clarify any mistaken belief that it altered the scope of information that must be provided to a patient by their provider in order to fulfill informed consent requirements.

D. Comments Addressing Whether the 2008 Final Rule Clarified the Provider Conscience Statutes

Comment: The Department sought information regarding whether the 2008 Final Rule provided the clarity that it intended to provide. The comments received in response to this question tended to focus on whether or not the definitions contained in the 2008 Final Rule were too broad. Commenters supporting rescission of the 2008 Final Rule indicated that the definitions were far broader than the scope of the federal provider conscience statutes. Commenters opposing rescission of the 2008 Final Rule did not believe the definitions were too broad. Many comments indicated that the 2008 Final Rule created confusion that the federal provider conscience protections authorized refusal to treat certain kinds of patients rather than to perform certain medical procedures. Numerous comments on both sides questioned whether the 2008 Final Rule expanded the scope of the provider conscience statutes by suggesting that the term "abortion" included contraception.

Response: The comments reflected a range of views regarding whether the 2008 Final Rule added clarity to the federal health care conscience statutes. The comments received illustrated that there is significant division over whether the definitions provided by the 2008 Final Rule are in line with the longstanding Federal health care provider conscience protection statutes.

The Department agrees with concerns that the 2008 Final Rule may have caused confusion as to whether the Federal statutory conscience protections allow providers to refuse to treat entire groups of people based on religious or moral beliefs. The Federal provider conscience statutes were intended to protect health care providers from being forced to participate in medical procedures that violated their moral and religious beliefs. They were never intended to allow providers to refuse to

provide medical care to an individual because the individual engaged in behavior the health care provider found objectionable.

The 2008 Final Rule did not provide that the term "abortion," as contained in the Federal health care provider conscience protection statutes, includes contraception. However, the comments reflect that the 2008 Final Rule caused significant confusion as to whether abortion also includes contraception. The provision of contraceptive services has never been defined as abortion in federal statute. There is no indication that the federal health care provider conscience statutes intended that the term "abortion" included contraception.

The Department rescinds the definitions contained in the 2008 Final Rule because of concerns that they may have caused confusion regarding the scope of the federal health care provider conscience protection statutes. The Department is not formulating new definitions because it believes that individual investigations will provide the best means of answering questions about the application of the statutes in particular circumstances.

E. Comments Addressing Access to Health Care

Concerns the 2008 Final Rule Would Limit Access

Comment: The Department received several comments suggesting that the 2008 Final Rule could limit access to reproductive health services and information, including contraception, and could impact a wide range of medical services, including care for sexual assault victims, provision of HIV/AIDS treatment, and emergency services. Additionally, a number of commenters expressed concern that the 2008 Final Rule could disproportionately affect access to health care by certain sub-populations, including low-income patients, minorities, the uninsured, patients in rural areas, Medicaid beneficiaries, or other medically-underserved populations.

Response: The Department agrees with comments that the 2008 Final Rule may negatively affect the ability of patients to access care if interpreted broadly. As noted above, in the litigation filed shortly after issuance of the 2008 Final Rule, eight states sought to enjoin implementation of the Rule, arguing that it would prevent them from enforcing their state laws concerning access to contraception. *Connecticut* v. *United* States, No. 3:09–CV–054–RNC (D. Conn). Additionally, while there are no Federal laws compelling hospitals to provide contraceptive services, the Medicaid Program does require that States provide contraceptive services to Medicaid beneficiaries. The Department is concerned that the breadth of the 2008 Final Rule may undermine the ability of patients to access these services, especially in areas where there are few health care providers for the patient to choose from. As we state above, entities must continue to comply with their Title X, Section 330, EMTALA, and Medicaid obligations, as well as the federal health care provider conscience protection statutes. Accordingly, the Department partially rescinds the 2008 Final Rule based on concerns expressed that it had the potential to negatively impact patient access to contraception and certain other medical services without a basis in federal conscience protection statutes.

Concerns That Rescission of the 2008 Final Rule Would Limit Access

Comment: A substantial number of comments in opposition to rescinding the 2008 Final Rule maintained that Roman Catholic hospitals would have to close, that rescission of the rule would limit access to pro-life counseling, and that providers would either leave the health care industry or choose not to enter it, because they believed that they would be forced to perform abortions. As such, these commenters concluded that rescinding the 2008 Final Rule would limit access to health care services or information.

Response: Under this partial rescission of the 2008 Final Rule, Roman Catholic hospitals will still have the same statutory protections afforded to them as have been for decades. The Department supports the longstanding Federal health care provider conscience laws, and with this Final Rule provides a clear process to enforce those laws. As discussed above, the Federal health care provider conscience statutes have provided protections for decades, and will continue to protect health care providers after partial rescission of the 2008 Final Rule. Entities must continue to comply with the Federal health care provider conscience protection statutes. Moreover, under this Final Rule, health care providers who believe their rights were violated will now be able to file a complaint with the Department's Office for Civil Rights in order to seek enforcement of those rights.

F. Comments Addressing Costs to Providers

Comment: The Department received several comments addressing the costs to providers of the 2008 Final Rule. Commenters stated that the new certification requirement imposed substantial additional responsibilities on health care entities, and that the burden analysis did not sufficiently account for the cost of collecting information for, submitting, and maintaining the written certifications required by the 2008 Final Rule. Additionally, the Department received several comments outlining various estimates regarding the burdens, including time and cost, on health care entities to comply with certification requirements of the 2008 Final Rule.

Response: The Federal health care provider conscience protection statutes mandating requirements for protecting health care providers have been in effect for decades. The stated reason for enacting the certification requirement was a concern that there is a lack of knowledge on the part of states, local governments, and the health care industry of the federal health care provider conscience protections. The Department believes it can raise awareness of these protections by amending existing grant documents to specifically require that grantees acknowledge they must comply with the laws.

The Department estimated that 571,947 health care entities would be required to comply with the certification requirements. The Department also stated in the preamble to the 2008 Final Rule that it estimated the total quantifiable costs of the regulation, including direct and indirect costs, as $43.6 million each year. See 73 FR 98095, Dec. 18, 2009.

The Department agrees with these commenters, and believes that the certification requirements in the 2008 Final Rule are unnecessary to ensure compliance with the federal health care provider conscience protection statutes, and that the certification requirements created unnecessary additional financial and administrative burdens on health care entities. The Department believes that amending existing grant documents to require grantees to acknowledge that they will comply with the provider conscience laws will accomplish the same result with far less administrative burden. While proposed, the certification requirements were never finalized under the previous rule, and they are deleted in this rule. The Department emphasizes, however, that health care entities remain responsible for costs associated with complying with the Federal health care provider conscience protection statutes, in the same way that health care entities were before the promulgation of the 2008 Final Rule. Additionally, health care

providers can now seek enforcement of their conscience protections through the Department's Office for Civil Rights.

V. Statutory Authority

The Secretary hereby rescinds, in part, redesignates, and revises the 2008 Final Rule entitled "Ensuring That Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law," in accordance with the following statutory authority. As discussed above, the Federal health care provider conscience protection statutes, including the Church Amendments, the PHS Act Sec. 245, and the Weldon Amendment, require, among other things, that the Department and recipients of Department funds (including state and local governments) refrain from discriminating against institutional and individual health care entities for their participation in certain medical procedures or services, including certain health services, or research activities funded in whole or in part by the Federal government. However, none of these statutory provisions require promulgation of regulations for their interpretation or implementation. The provision of the 2008 Final Rule establishing that the Office for Civil Rights is authorized to receive and investigate complaints regarding violations of the federal health care provider conscience statutes is being retained. This Final Rule is being issued pursuant to the authority of 5 U.S.C. 301, which empowers the head of an Executive department to prescribe regulations "for the government of his department, the conduct of his employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property."

VI. Overview and Section-by-Section Description of the Final Rule

Section 88.1 describes the purpose of the Final Rule. The language is revised slightly from the 2008 Final Rule, and states that the purpose of Part 88 is to provide for the enforcement of the Church Amendments, 42 U.S.C. 300a–7, section 245 of the Public Health Service Act, 42 U.S.C. 238n, and the Weldon Amendment, Consolidated Appropriations Act, 2010, Public Law 111–117, Div. D, Sec. 508(d), 123 Stat. 3034, 3279–80, referred to collectively as the "federal health care conscience protection statutes."

Sections 88.2 through 88.5 of the 2008 Final Rule have been removed. Section 88.2 contains definitions of terms used in the Federal health care provider conscience statutes. Section 88.3 describes the applicability of the 2008 Final Rule. Section 88.4 describes the requirements and prohibitions under the 2008 Final Rule. Section 88.5 contains the certification requirement. The preamble to the August 26, 2008 Notice of Proposed Rulemaking (73 FR 50274) and the preamble to the December 19, 2008 Final Rule (73 FR 78072) addressing these sections are neither the position of the Department, nor guidance that should be relied upon for purposes of interpreting the Federal health care provider conscience protection statutes.

Section 88.6 has been re-designated as Section 88.2. Section 88.2 provides that the Department's Office for Civil Rights (OCR) is designated to receive complaints of discrimination and coercion based on the health care provider conscience protection statutes, and that OCR will coordinate the handling of complaints with the HHS Departmental funding component(s) from which the entity complained about receives funding. This language is revised slightly from the 2008 Final Rule to clarify that "Department funding component" is not a defined term.

VII. Impact Statement and Other Required Analyses

We have examined the impacts of this final rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993, as further amended), the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). The 2008 Final Rule estimated the quantifiable costs associated with the certification requirements of the proposed regulation to be $43.6 million each year. Rescinding the certification requirements of the final rule would therefore result in a cost savings of $43.6 million each year to the health care industry.

The RFA requires agencies to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. With this final rule the Department is rescinding the certification requirements which will reduce the potential burden to small businesses. We have examined the implications of this proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: having an annual effect on the economy of $100 million, adversely affecting a single sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. This final rule is not economically significant under these standards.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts State law, or otherwise has federalism implications. This final rule would not require additional steps to meet the requirements of Executive Order 13132.

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires cost-benefit and other analysis before any rulemaking if the rule includes a "Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year." The current inflation-adjusted statutory threshold is approximately $130 million. We have determined that this final rule does not create an unfunded mandate under the Unfunded Mandates Reform Act, because it does not impose any new requirements resulting in expenditures by state, local, and tribal governments, or by the private sector.

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal departments and agencies to determine whether a proposed policy or regulation could affect family well-being. If the determination is affirmative, then the Department or agency must prepare an impact assessment to address criteria specified in the law. This final rule will not have an impact on family wellbeing,

as defined in the Act, because it affects only regulated entities and eliminates costs that would otherwise be imposed on those entities.

VIII. Paperwork Reduction Act Information Collection

This final rule eliminates requirements that would be imposed by the 2008 Final Rule. The 60-day comment period on the information collection requirements of the 2008 Final Rule expired on February 27, 2009, and OMB approval for the information collection requirements will not be sought.

New Paperwork Collection Act Information for Complaints

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and to solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

1. The need for the information collection and its usefulness in carrying out the proper functions of our agency.

2. The accuracy of our estimate of the information collection burden.

3. The quality, utility, and clarity of the information to be collected.

4. Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Under the PRA, the time, effort, and financial resources necessary to meet the information collection requirements referenced in this section are to be considered. We explicitly seek, and will consider, public comment on our assumptions as they relate to the PRA requirements summarized in this section. To comment on this collection of information or to obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your comment or request, including your address and phone number to *sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60 days.

45 CFR part 88, § 88.2 provides that individuals or entities may file written complaints with the Department's Office for Civil Rights if they believe they have been discriminated against under the federal health care provider conscience protection statutes by programs or entities that receive Federal financial assistance from the Department. The new information collection provisions associated with this final rule will not go into effect until approved by OMB. HHS will separately post a notice in the **Federal Register** at that time.

The table below reflects the Office for Civil Rights current complaint receipts under its other civil rights enforcement authorities. HHS does not expect the burden to increase measurably as a result of this provision.

Estimated Annualized Burden Table

Individuals may file written complaints with the Office for Civil Rights when they believe they have been discriminated against on the basis of race, color, national origin, age, disability, and, in certain circumstances, sex and religion by programs or entities that receive Federal financial assistance from the Department of Health and Human Services. The table below includes: The annual number of respondents to the Office for Civil Rights regarding all the authorities that it enforces; the frequency of submission, including recordkeeping and reporting on occasion; and the affected public, including not-for-profit entities and individuals.

Forms (if necessary)	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Civil Rights Complaint Form	Individuals or Not-for-profit entities ..	3037	1	45/60	2278
Total	.....	3037	.....	.....	2278

List of Subjects in 45 CFR Part 88

Abortion, Civil rights, Colleges and universities, Employment, Government contracts, Government employees, Grant programs, Grants administration, Health care, Health insurance, Health professions, Hospitals, Insurance companies, Laboratories, Medicaid, Medical and dental schools, Medical research, Medicare, Mental health programs, Nursing homes, Public health, Religious discrimination, Religious liberties, Reporting and recordkeeping requirements, Rights of conscience, Scientists, State and local governments, Sterilization, Students.

Dated: February 17, 2011.

Kathleen Sebelius,

Secretary.

For the reasons set forth in the preamble, the Department amends 45 CFR part 88, as set forth below:

PART 88—ENSURING THAT DEPARTMENT OF HEALTH AND HUMAN SERVICES FUNDS DO NOT SUPPORT COERCIVE OR DISCIMINATORY POLICIES OR PRACTICES IN VIOLATION OF FEDERAL LAW

■ 1. The authority citation for part 88 is revised to read as follows:

Authority: 5 U.S.C. 301.

■ 2. The heading of part 88 is revised to read as set forth above.

■ 3. Revise § 88.1 to read as follows:

§ 88.1 Purpose.

The purpose of this part is to provide for the enforcement of the Church Amendments, 42 U.S.C. 300a–7, section 245 of the Public Health Service Act, 42 U.S.C. 238n, and the Weldon Amendment, Consolidated Appropriations Act, 2010, Public Law 111–117, Div. D, Sec. 508(d), 123 Stat. 3034, 3279–80, referred to collectively as the "federal health care provider conscience protection statutes."

■ 4. Remove §§ 88.2 through 88.5.

■ 5. Redesignate § 88.6 as § 88.2.

■ 6. Revise newly designated § 88.2 to read as follows:

§ 88.2 Complaint handling and investigating.

The Office for Civil Rights (OCR) of the Department of Health and Human Services is designated to receive complaints based on the Federal health care provider conscience protection statutes. OCR will coordinate the handling of complaints with the Departmental funding component(s) from which the entity, to which a

complaint has been filed, receives funding.

[FR Doc. 2011–3993 Filed 2–18–11; 11:15 am]

BILLING CODE P

Proposed Rules

Federal Register
Vol. 76, No. 36
Wednesday, February 23, 2011

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 318 and 319

[Docket No. APHIS–2006–0077]

RIN 0579–AD32

South American Cactus Moth; Territorial and Import Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Hawaiian and territorial quarantine regulations to prohibit the movement of South American cactus moth host material, including nursery stock and plant parts for consumption to the mainland and Guam from Hawaii, Puerto Rico, and the U.S. Virgin Islands, and to allow South American cactus moth host material to be moved among Hawaii, Puerto Rico, and the U.S. Virgin Islands. We are also proposing to amend the foreign quarantine regulations to prohibit the importation of South American cactus moth host material, including nursery stock and plant parts for consumption, from any country or portion of a country infested with South American cactus moth. These actions would help prevent the introduction or spread of South American cactus moth into noninfested areas of the United States, relieve unnecessary restrictions on movement of host material among infested areas of the United States, and provide consistency to the regulations.

DATES: We will consider all comments that we receive on or before April 25, 2011.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2006–0077* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2006–0077, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0077.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Robyn Rose, National Program Lead, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Rd. Unit 26, Riverdale, MD 20737–1236; (301) 734–7121.

SUPPLEMENTARY INFORMATION:

Background

The South American cactus moth (*Cactoblastis cactorum*) is a grayish-brown moth with a wingspan of 22 to 35 millimeters (approximately 0.86 to 1.4 inches) that is indigenous to Argentina, southern Brazil, Paraguay, and Uruguay. It is a serious quarantine pest of *Opuntia* spp., and an occasional pest of *Nopalea* spp., *Cylindropuntia* spp., and *Consolea* spp., four closely related genera of the family *Cactaceae.* All plant parts, except seeds, of these species can be infested with South American cactus moth. After an incubation period following mating, the female South American cactus moth deposits an egg stick resembling a cactus spine on the host plant. The egg stick, which consists of 70 to 90 eggs, hatches in 25 to 30 days, and the larvae bore into the cactus pad to feed, eventually hollowing it out and killing the plant. Within a short period of time, the South American cactus moth can destroy whole stands of cactus. Since the South American cactus moth larvae are internal feeders, they are difficult to detect during normal inspection.

In the 1920s, the South American cactus moth was introduced into Australia and other areas as a biological control agent of invasive prickly pear cactus (*Opuntia* spp.). Its success led to its introduction into the Caribbean and Hawaii in the 1950s. In 1989 it was detected in southern Florida. More recently, South American cactus moth has been discovered in other parts of Florida, as well as in Alabama, Georgia, Louisiana, Mississippi, and South Carolina, and it continues to spread north and west.

The Southwest United States and Mexico are home to 114 native species of *Opuntia,* which are highly valued for their ecological and agricultural uses. The rooting characteristics of *Opuntia* spp. reduce wind and rain erosion, encouraging the growth of other plants in degraded areas. In addition, many species of birds, mammals, reptiles, and insects eat, nest in, or otherwise rely on *Opuntia* spp. for survival. *Opuntia* spp. are also important sources of food, medicine, cosmetics, and dye. In Mexico, *Opuntia* spp. are an important agricultural commodity, comprising 1.5 percent of total agricultural production and representing 2.5 percent of the value of agricultural production. In the Southwest United States, *Opuntia* spp. are only a minor agricultural crop, but are popular plants in the landscaping and ornamental nursery industries. *Opuntia* spp. can also be an important source of emergency forage for cattle grazing during periods of drought. If the South American cactus moth were to spread to these areas, there would be significant environmental and economic damage.

In a final rule published in the **Federal Register** on June 8, 2009 (74 FR 27071–27076, Docket No. APHIS–2006–0153), and effective July 8, 2009, the Animal and Plant Health Inspection Service (APHIS) established regulations quarantining the States of Alabama, Florida, Georgia, Mississippi, and South Carolina, and restricting the movement of South American cactus moth host material from those States to prevent the artificial dissemination of the South American cactus moth into noninfested areas of the United States. In addition, in an interim rule published in the **Federal Register** and effective on July 15, 2010 (75 FR 41073–41074, Docket No. APHIS–2010–0037), we added Louisiana to the list of States

quarantined due to the presence of South American cactus moth. APHIS, in cooperation with the Agricultural Research Service and funding provided by the Government of Mexico, is continuing to test and implement a sterile insect release program along the U.S. Gulf Coast. In support of our sterile insect program and domestic regulations and to make our regulations for the importation and interstate movement of South American cactus moth host material consistent, we are proposing to amend our territorial and import regulations to restrict the movement of South American cactus moth host material into the continental United States.

Hawaiian and Territorial Regulations

The regulations in 7 CFR part 318 (referred to below as the Hawaiian and territorial regulations) govern the movement of plants and plant products, for consumption and propagation, from Hawaii and from Guam, Puerto Rico, the U.S. Virgin Islands, the Commonwealth of the Northern Mariana Islands, and all other U.S. territories and possessions between themselves and into the continental United States. In addition, the name and origin of all fruits and vegetables authorized movement under 7 CFR part 318, as well as the applicable requirements for their movement, may be found in the fruits and vegetables manuals for Hawaii and Puerto Rico.[1]

The Hawaiian and territorial regulations currently restrict the movement of all cactus plants or parts thereof from Hawaii, Puerto Rico, and the U.S. Virgin Islands, which are known to be infested with South American cactus moth. Specifically, the regulations in § 318.13–1 prohibit the interstate movement of all cut flowers and fruits and vegetables and plants and portions of plants from Hawaii, which includes cactus plants or parts thereof, unless they are specifically approved for interstate movement or frozen or processed to sufficiently preclude the survival of any pests in accordance with §§ 318.13 and 318.14, respectively. The regulations in § 318.13–16 limit the interstate movement of all cactus plants or parts thereof from Puerto Rico and the Virgin Islands to those cactus plants that are bare-rooted or grown in an approved growing medium listed in § 318.13–2 and that are treated in accordance with 7 CFR part 305.[2] However, the only treatment listed in the PPQ Treatment Manual for pests of cactus that feed internally is T201-f-2, a treatment for borers and soft scales that consists of fumigation using methyl bromide. There is no data to support the effectiveness of this treatment against South American cactus moth.

As stated in § 305.3, APHIS may add, revise, or remove a treatment schedule if necessary by publishing a notice informing the public of the reasoning behind the addition, revision, or removal, and taking comment on the action. Following the comment period, we will consider comments received on the notice and publish a followup notice announcing our determination with regard to the action. In accordance with that process, we are proposing to amend the PPQ Treatment Manual by adding the words "(other than South American cactus moth (*Cactoblastis cactorum*))" after the word "borers" under the heading "Pest" in treatment schedule T201-f-2.

Except as otherwise noted, the interstate movement of all cactus plants or parts thereof from Hawaii is currently prohibited and the interstate movement of cactus plants or parts thereof from Puerto Rico and the U.S. Virgin Islands is restricted unless the cactus plant is grown in approved growing media and treated in accordance with 7 CFR part 305. Since these requirements were put into place, we have determined that South American cactus moth does not infest all species of cactus. Therefore, we are proposing to amend the table in paragraph (a) of § 318.13–16 by removing the entries for cactus moving interstate from Puerto Rico and the U.S. Virgin Islands. We would amend the Puerto Rico fruits and vegetables manual to indicate that the interstate movement of South American cactus moth host cacti to the mainland United States is prohibited. We are also proposing to amend the fruits and vegetables manuals for Hawaii and Puerto Rico to allow cacti that are not South American cactus moth hosts to be moved between Hawaii and the continental United States and between Puerto Rico, the U.S. Virgin Islands, and the continental United States.

In addition, as Hawaii, Puerto Rico, and the U.S. Virgin Islands are already infested with South American cactus moth, there is no reason to prohibit the movement of South American cactus moth host plants or parts among these areas. Therefore, we are also proposing to amend the fruits and vegetables manuals for Hawaii and Puerto Rico to allow South American cactus moth host plants and plant parts to be moved between these areas without restriction. Finally, we are proposing to amend the fruits and vegetables manuals for Hawaii and Puerto Rico by removing the obsolete term "cactus borer" in reference to *C. cactorum* and replacing it with the current term "South American cactus moth."

These changes are necessary because Hawaii, Puerto Rico, and the U.S. Virgin Islands are infested with South American cactus moth and there is no control program for South American cactus moth in those areas. In addition, there is no trade or anticipated trade of South American cactus moth host material among Hawaii and the territories or between Hawaii and the territories and the mainland United States.

These changes would prohibit the movement of unprocessed South American cactus moth host material, such as nursery stock, from Hawaii, Puerto Rico, and the U.S. Virgin Islands into or through the continental United States and all other noninfested territories and possessions as well as allow for the unrestricted movement of plants and plant products that are not hosts of the South American cactus moth from Hawaii, Puerto Rico, or the U.S. Virgin Islands into or through the continental United States.

Importation of Plants for Propagation

The regulations in 7 CFR part 319 (referred to below as the import regulations) govern the movement into the United States from all foreign countries, of plants and plant products for consumption and propagation. The regulations in §§ 319.37 through 319.37–14 govern the importation of plants and plant products, including nursery stock, for propagation. The import regulations in § 319.37–2(b)(5) currently prohibit the importation of all cactus cuttings for propagation, without roots or branches, that are greater than 153 millimeters (approximately 6 inches) in diameter or greater than 1.2 meters (approximately 4 feet) in length from all countries except Canada unless imported by the United States Department of Agriculture for scientific or experimental purposes under the conditions in § 319.37–2(c). APHIS further prohibits in § 319.37–2(b)(6) the importation of all cactus plants for propagation, from all countries, except Canada, that exceed 460 millimeters (approximately 18 inches) in length from the soil line to the farthest terminal

[1] The fruits and vegetables manuals for Hawaii and Puerto Rico can be found on the Internet at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/Hawaii.pdf* and *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/puerto_rico.pdf,* respectively.

[2] Treatment schedules approved for use under 7 CFR part 305 are available in the PPQ Treatment Manual at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf.*

growing point and whose growth habits simulate the woody habits of trees and shrubs unless imported by the United States Department of Agriculture for scientific or experimental purposes under the conditions in § 319.37–2(c).

The current size restrictions were designed to make it easier to handle imported cacti during inspection rather than as a way to prevent South American cactus moth or other cactus pests from entering the United States. As most cactus plants and cuttings imported for propagation are smaller than these size limits, the current regulations effectively permit the entry of all cactus plants and cuttings, including South American cactus moth host species, into the United States. Therefore, we are proposing to amend the table in § 319.37–2(a) to prohibit the importation of all cactus moth host material (excluding seeds) from areas infested with South American cactus moth. These changes would prohibit the movement of cactus moth nursery stock into the United States from all countries infested with South American cactus moth. Countries infested with South American cactus moth [3] include: Antigua, Argentina, Ascension Island, Australia, Bahamas, Botswana, Brazil, Cayman Islands, Cuba, Dominican Republic, Dominica, Guadeloupe, Haiti, Jamaica, Lesotho, Mauritius, Montserrat, Namibia, Nevis, New Caledonia, Paraguay, South Africa, St. Helena, St. Lucia, St. Vincent, St. Kitts, Swaziland, Tanzania, Uruguay, and the Republic of Zimbabwe.

Importation of Fruits and Vegetables

The regulations in §§ 319.56–1 through 319.56–50 govern the importation of plants and plant products intended for consumption. Under § 319.564(a), fruits or vegetables that the Administrator has determined may be imported subject to one or more of the designated phytosanitary measures cited in § 319.56–4(b), are listed in the Fruits and Vegetables Import Requirements (FAVIR) database found on the APHIS Web site at *http://www.aphis.usda.gov/favir/info.shtml.* Currently, the importation into the United States of the fruit of *Opuntia* species cacti, called "tuna," is authorized only from the Bahamas, Belize, Chile, Colombia, the Dominican Republic, Guatemala, Haiti, Israel, Italy, Jamaica, and Mexico. The importation of prickly pear pads, also called "nopales," of *Opuntia* species cacti is currently authorized only from Colombia and Mexico. Importation of this fruit from all other countries is prohibited. We are proposing to amend the FAVIR database in order to remove the Bahamas, the Dominican Republic, Haiti, and Jamaica from the list of countries authorized to import tuna or nopales because those countries have been determined to be infested with South American cactus moth.

Any country that is not authorized to export South American cactus moth host material to the United States for consumption would be able to request approval to import South American cactus moth host material. APHIS would evaluate the request and prepare a pest risk assessment and risk management document in order to determine whether the commodity may be safely imported into the continental United States without presenting a risk of introducing South American cactus moth into noninfested areas of the United States.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to amend the Hawaiian and territorial quarantine regulations to prohibit the movement of South American cactus moth host material, including nursery stock and plant parts for consumption to the mainland and Guam from Hawaii, Puerto Rico, and the U.S. Virgin Islands, and to allow South American cactus moth host material to be moved among Hawaii, Puerto Rico, and the U.S. Virgin Islands. We are also proposing to amend the foreign quarantine regulations to prohibit the importation of South American cactus moth host material, including nursery stock and plant parts for consumption, from any country or portion of a country infested with South American cactus moth.

Published data on U.S. trade do not offer the level of detail necessary to identify South American cactus moth host plants and plant parts moving in commerce specifically. Accordingly, data on the volume (and value) of U.S. imports of those host plants and plant parts are not available from that source. Nevertheless, APHIS and Agricultural Marketing Service internal reports, as well as informed APHIS staff, indicate that the volume of host plant and host plant part imports from the countries infested with the pest is negligible. Of the countries infested with South American cactus moth, only the Dominican Republic is known to have shipped host plant parts to the United States in recent years. Virtually all imports of South American cactus moth host plant parts come from Mexico, a country that is not currently infested with the pest. In 2009, Mexico exported 2,266 metric tons of nopales to the United States valued at over $2 million. The proposed rule, therefore, should have little impact on U.S. imports of South American cactus moth host plant parts.

The restriction on the movement of South American cactus moth host plant parts from Hawaii, Puerto Rico, and the U.S. Virgin Islands to the mainland United States should have little or no impact. For one, such movement from Hawaii is already prohibited, and the interstate movement of cactus plants or parts thereof from Puerto Rico and the U.S. Virgin Islands is limited.

The rule would allow South American cactus moth host plants and plant parts to be moved between Hawaii, Puerto Rico, and the U.S. Virgin Islands. Such movement should have little impact, as those areas are already infested with South American cactus moth, and there is no program in those areas to control the pest. To the extent that it would prevent the spread of South American cactus moth on the mainland, the rule would benefit U.S. entities, primarily those in the ornamental nursery and landscape industries in the Southwest. Most commercial nurseries that produce prickly pear cacti are located in Arizona, followed by California. In Arizona, there are an estimated 40 to 50 producers in the Phoenix area alone; in California, there are an estimated 30 growers of cacti. Many, if not most, cactus growers are small in size.[4]

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

[3] The presence of South American cactus moth in these countries was confirmed by literature from the European and Mediterranean Plant Protection Organization, the International Atomic Energy Agency, and the Centre for Agricultural Bioscience International.

[4] Source: Irish, M. 2001. The Ornamental Prickly Pear Industry in the Southwest United States. Florida Entomologist 84(4).

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 318

Cotton, Cottonseeds, Fruits, Guam, Hawaii, Plant diseases and pests, Puerto Rico, Quarantine, Transportation, Vegetables, Virgin Islands.

7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are proposing to amend 7 CFR parts 318 and 319 as follows:

PART 318—STATE OF HAWAII AND TERRITORIES QUARANTINE NOTICES

1. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

§ 318.13–6 [Amended]

2. In § 318.13–16, the table in paragraph (a) is amended under Puerto Rico and U.S. Virgin Islands by removing the entries for "Cactus".

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

4. In § 319.37–2, paragraph (a), the table is amended by adding, in alphabetical order, new entries for *Consolea* spp., *Cylindropuntia* spp., *Nopalea* spp., and *Opuntia* spp. to read as follows:

§ 319.37–2 Prohibited articles.

(a) * * *

Prohibited article (includes seeds only if specifically mentioned)	Foreign places from which prohibited	Plant pests existing in the places named and capable of being transported with the prohibited article
*	* * * * *	* *
Consolea spp.	Antigua, Argentina, Ascension Island, Australia, Bahamas, Botswana, Brazil, Cayman Islands, Cuba, Dominican Republic, Dominica, Guadeloupe, Haiti, Jamaica, Lesotho, Mauritius, Montserrat, Namibia, Nevis, New Caledonia, Paraguay, South Africa, St. Helena, St. Lucia, St. Vincent, St. Kitts, Tanzania, Uruguay, Republic of Zimbabwe.	*Cactoblastis cactorum* (South American cactus moth).
*	* * * * *	* *
Cylindropuntia spp.	Antigua, Argentina, Ascension Island, Australia, Bahamas, Botswana, Brazil, Cayman Islands, Cuba, Dominican Republic, Dominica, Guadeloupe, Haiti, Jamaica, Lesotho, Mauritius, Montserrat, Namibia, Nevis, New Caledonia, Paraguay, South Africa, St. Helena, St. Lucia, St. Vincent, St. Kitts, Tanzania, Uruguay, Republic of Zimbabwe.	*Cactoblastis cactorum* (South American cactus moth).
*	* * * * *	* *
Nopalea spp.	Antigua, Argentina, Ascension Island, Australia, Bahamas, Botswana, Brazil, Cayman Islands, Cuba, Dominican Republic, Dominica, Guadeloupe, Haiti, Jamaica, Lesotho, Mauritius, Montserrat, Namibia, Nevis, New Caledonia, Paraguay, South Africa, St. Helena, St. Lucia, St. Vincent, St. Kitts, Tanzania, Uruguay, Republic of Zimbabwe.	*Cactoblastis cactorum* (South American cactus moth).
*	* * * * *	* *
Opuntia spp.	Antigua, Argentina, Ascension Island, Australia, Bahamas, Botswana, Brazil, Cayman Islands, Cuba, Dominican Republic, Dominica, Guadeloupe, Haiti, Jamaica, Lesotho, Mauritius, Montserrat, Namibia, Nevis, New Caledonia, Paraguay, South Africa, St. Helena, St. Lucia, St. Vincent, St. Kitts, Tanzania, Uruguay, Republic of Zimbabwe.	*Cactoblastis cactorum* (South American cactus moth).
*	* * * * *	* *

* * * * *

Done in Washington, DC, this 16th day of February 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–3991 Filed 2–22–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

[Docket ID: DOE–HQ–2010–0002]

10 CFR Part 1021

RIN 1990–AA34

National Environmental Policy Act Implementing Procedures

AGENCY: Office of the General Counsel, U.S. Department of Energy.

ACTION: Proposed rule: re-opening of public comment period.

SUMMARY: The U.S. Department of Energy (DOE) is re-opening the public comment period for proposed amendments to its regulations governing compliance with the National Environmental Policy Act (NEPA), made available for public comment on January 3, 2011 (76 FR 214). This is being done in response to a request on behalf of multiple organizations.

DATES: The public comment period ended on February 17, 2011. The comment period is being re-opened and will close on March 7, 2011.

ADDRESSES: Submit comments, labeled "DOE NEPA Implementing Procedures, RIN 1990–AA34," by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments electronically. This rulemaking is assigned Docket ID: DOE–HQ–2010–0002. Comments may be entered directly on the Web site. Electronic files may be submitted to this Web site.

2. *Mail:* Mail comments to NEPA Rulemaking Comments, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Because security screening may delay mail sent through the U.S. Postal Service, DOE encourages electronic submittal of comments.

FOR FURTHER INFORMATION CONTACT: For general information about DOE's NEPA procedures, contact Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance, at 202–586–4600 or leave a message at 800–472–2756. For questions concerning how to comment on this proposed rule, contact Ms. Yardena Mansoor, Office of NEPA Policy and Compliance, at *askNEPA@hq.doe.gov* or 202–586–9326.

SUPPLEMENTARY INFORMATION: On January 3, 2011, DOE published a Notice of Proposed Rulemaking in the **Federal Register** (76 FR 214) to invite public comment on proposed amendments to its existing regulations governing compliance with NEPA and announce a public hearing. The notice provided for the submission of comments by February 17, 2011, including at a public hearing held on February 4, 2011. The National Wildlife Federation, on behalf of itself and nine other organizations, requested DOE to extend the comment period to allow additional time for review of the proposed rule and the submission of comments. DOE has determined that re-opening the public comment period in response to this request is appropriate and hereby re-opens the comment period. DOE will consider any comments received between February 23, 2011 and March 7, 2011, and deems any comments received between publication of the Notice of Proposed Rulemaking on January 3, 2011, and March 7, 2011, to be timely submitted.

Issued in Washington, DC, on February 16, 2011.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 2011–3981 Filed 2–22–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0043; Directorate Identifier 2010–NM–192–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model DHC–8–400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> During production quality inspections of the aeroplane fuel motive flow system, it was discovered that some motive flow check valves (MFCV) were manufactured with an outlet fitting containing red anodized threads. These MFCV do not provide adequate electrical bonding between the valve and the adjacent fitting.
>
> In the absence of proper electrical bonding within the motive flow system, the aeroplane fuel tank could be exposed to ignition sources in the case of a lightning strike.
>
> * * * * *

The unsafe condition is the potential for ignition sources inside the fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by April 11, 2011.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., Q–Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; e-mail *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: James Delisio, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7321; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0043; Directorate Identifier 2010–NM–192–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://*

www.regulations.gov, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2010–21, dated July 20, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> During production quality inspections of the aeroplane fuel motive flow system, it was discovered that some motive flow check valves (MFCV) were manufactured with an outlet fitting containing red anodized threads. These MFCV do not provide adequate electrical bonding between the valve and the adjacent fitting.
>
> In the absence of proper electrical bonding within the motive flow system, the aeroplane fuel tank could be exposed to ignition sources in the case of a lightning strike.
>
> This [TCCA] directive is issued to [do a general visual inspection to] verify the proper configuration of the MFCV and if required, replace the affected MFCV with a MFCV that has a chemically filmed (gold color) outlet valve fitting, which provides adequate electrical bonding.

The unsafe condition is the potential for ignition sources inside the fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Service Bulletin 84–28–08, dated March 11, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 67 products of U.S. registry. We also estimate that it would take about 33 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $130 per product. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $196,645, or $2,935 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this proposed rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Bombardier, Inc.: Docket No. FAA–2011–0043; Directorate Identifier 2010–NM–192–AD.

Comments Due Date

(a) We must receive comments by April 11, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes, certificated in any category; having serial numbers 4001 through 4190 inclusive, 4199 through 4201 inclusive, and 4203 through 4216 inclusive; equipped with a motive flow check valve (MFCV) having part number (P/N) 2960018–101.

Subject

(d) Air Transport Association (ATA) of America Code 28, Fuel.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

During production quality inspections of the aeroplane fuel motive flow system, it was discovered that some motive flow check valves (MFCV) were manufactured with an

outlet fitting containing red anodized threads. These MFCV do not provide adequate electrical bonding between the valve and the adjacent fitting.

In the absence of proper electrical bonding within the motive flow system, the aeroplane fuel tank could be exposed to ignition sources in the case of a lightning strike.

* * * * *

The unsafe condition is the potential for ignition sources inside the fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Actions

(g) Within 6,000 flight hours after the effective date of this AD, do a general visual inspection for red anodized threads of the outlet fitting of the MFCV having P/N 2960018–101 installed in the left and right wing fuel tanks, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–28–08, dated March 11, 2010. If the MFCV has a chemical film coating (gold color) outlet fitting, no further action is required by AD, except as required by paragraph (i) of this AD.

(h) If during the inspection required by paragraph (g) of this AD, a MFCV having a red anodized check valve outlet fitting is found: Before further flight, replace the MFCV with a MFCV that has a chemical film coating (gold color) check valve outlet fitting, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–28–08, dated March 11, 2010.

(i) As of the effective date of this AD, no person may install a replacement MFCV having P/N 2960018–101, with a red anodized check valve outlet fitting, on any airplane.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(j) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

Related Information

(k) Refer to TCCA Airworthiness Directive CF–2010–21, dated July 20, 2010; and Bombardier Service Bulletin 84–28–08, dated March 11, 2010; for related information.

Issued in Renton, Washington on February 14, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–4011 Filed 2–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0139; Directorate Identifier 2010–CE–057–AD]

RIN 2120–AA64

Airworthiness Directives; B/E Aerospace, Continuous Flow Passenger Oxygen Mask Assembly, Part Numbers 174006–(), 174080–(), 174085–(), 174095–(), 174097–(), and 174098–()

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above, except for those that are currently affected by similar action through any of five ADs applicable to Boeing products. This proposed AD would require an inspection/records check to determine the manufacturer and part number of the oxygen mask assemblies installed, an inspection to determine the manufacturing date and modification status if certain oxygen mask assemblies are installed, and corrective action for certain oxygen mask assemblies. This proposed AD was prompted by a report that several oxygen mask assemblies with broken in-line flow indicators were found following a mask deployment. We are proposing this AD to prevent the in-line flow indicators of the oxygen mask assembly from fracturing and separating, which could inhibit oxygen flow to the masks. This condition could consequently result in occupants developing hypoxia following a depressurization event.

DATES: We must receive comments on this proposed AD by April 11, 2011.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact B/E Aerospace, 10800 Pflumm Road, Lenexa, Kansas 66215; telephone: 913–888–9800; fax: 913–469–8419; Internet: *http://www.beaerospace.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: David Fairback, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4154; fax: (316) 946–4107; e-mail: *david.fairback@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0139; Directorate Identifier 2010–CE–057–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will

consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We received a report that several oxygen mask assemblies with broken in-line flow indicators were found following a mask deployment. That report prompted us to issue the following ADs:

- AD 2007–26–06, amendment 39–15308 (72 FR 71210, December 17, 2007), for certain Boeing Model 747–200B, 747–300, and 747–400 series airplanes identified in Boeing Service Bulletin 747–35–2119, dated November 30, 2006;
- AD 2008–08–08, amendment 39–15460 (73 FR 19982, April 14, 2008), for certain Boeing Model 757–200, 757–200CB, 757–200PF, and 757–300 series airplanes identified in Boeing Special Attention Service Bulletin 757–35–0028, dated April 9, 2007;
- AD 2008–12–05, amendment 39–15548 (73 FR 32996, June 11, 2008), for certain Boeing Model 777–200, 777–200LR, 777–300, and 777–300ER series airplanes identified in Boeing Special Attention Service Bulletin 777–35–0019, dated March 9, 2006;
- AD 2008–13–21, amendment 39–15584 (73 FR 37781, July 2, 2008), for certain Boeing Model 767–200, 767–300, and 767–400ER series airplanes identified in Boeing Special Attention Service Bulletin 767–35–0054, dated July 6, 2006; and
- AD 2010–14–06, amendment 39–16351 (75 FR 38014, July 1, 2010), for certain Boeing Model 737–200, 737–300, 737–400, and 737–500 series airplanes identified in Boeing Special Attention Service Bulletin 737–35–1099, Revision 1, dated April 23, 2009.

Those ADs require an inspection to determine the manufacturer and manufacture date of certain oxygen mask assemblies and corrective action if necessary. We issued those ADs to prevent the in-line flow indicators of the oxygen mask assembly from fracturing and separating, which could inhibit oxygen flow to the masks. This condition could consequently result in occupants developing hypoxia following a depressurization event.

Actions Since Existing ADs Were Issued

Since we issued the ADs listed in the previous section, we determined that the oxygen mask assemblies on the affected aircraft have the same flow indicators as those installed on certain oxygen mask assemblies manufactured under B/E Aerospace Technical Standard Order Authorization (TSOA) for Technical Standard Order (TSO) TSO–C64 and TSO–C64A. Articles manufactured under a TSOA may be installed on various aircraft by a supplemental type certificate or field approval. Therefore, we have determined that aircraft other than those identified in the ADs listed in the previous section may also be subject to the identified unsafe condition.

This condition, if not corrected, could result in the in-line flow indicators of the oxygen mask assembly fracturing and separating, which could inhibit oxygen flow to the masks and consequently result in occupants developing hypoxia following a depressurization event.

Relevant Service Information

We reviewed B/E Aerospace Service Bulletin 174080–35–04, Rev 000, dated September 6, 2010. The service information describes procedures for identifying an affected oxygen mask assembly and modifying the oxygen mask assembly by replacing the in-line flow indicator with an improved in-line flow indicator.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously.

Differences Between the Proposed AD and the Service Information

B/E Aerospace Service Bulletin 174080–35–04, Rev 000, dated September 6, 2010, lists all affected oxygen mask assembly part numbers; including part numbers listed in B/E Aerospace Service Bulletin 174080–35–01, February 6, 2006 (original issue); Revision 1, dated May 1, 2006; and Revision 2, dated May 28, 2008. The oxygen mask assemblies affected by AD 2007–26–06, AD 2008–08–08, AD 2008–12–05, AD 2008–13–21, or AD 2010–14–06 are not affected by this proposed AD.

Costs of Compliance

We estimate that this proposed AD affects 400,000 oxygen mask assemblies.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace the in-line flow indicator per mask.	0.5 work-hour × $85 per hour = $42.50 ...	$6.00	$48.50	$19,400,000

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

B/E Aerospace: Docket No. FAA–2011–0139; Directorate Identifier 2010–CE–057–AD.

Comments Due Date

(a) We must receive comments by April 11, 2011.

Affected ADs

(b) None. This AD does not revise or supersede any existing ADs. The following ADs address the unsafe condition described in paragraph (e) of this AD for certain installations on certain Boeing airplanes:

(1) AD 2007–26–06, amendment 39–15308 (72 FR 71210, December 17, 2007), for certain Boeing Model 747–200B, 747–300, and 747–400 series airplanes identified in Boeing Service Bulletin 747–35–2119, dated November 30, 2006;

(2) AD 2008–08–08, amendment 39–15460 (73 FR 19982, April 14, 2008), for certain Boeing Model 757–200, 757–200CB, 757–200PF, and 757–300 series airplanes identified in Boeing Special Attention Service Bulletin 757–35–0028, dated April 9, 2007;

(3) AD 2008–12–05, amendment 39–15548 (73 FR 32996, June 11, 2008), for certain Boeing Model 777–200, 777–200LR, 777–300, and 777–300ER series airplanes identified in Boeing Special Attention Service Bulletin 777–35–0019, dated March 9, 2006;

(4) AD 2008–13–21, amendment 39–15584 (73 FR 37781, July 2, 2008), for certain Boeing Model 767–200, 767–300, and 767–400ER series airplanes identified in Boeing Special Attention Service Bulletin 767–35–0054, dated July 6, 2006; and

(5) AD 2010–14–06, amendment 39–16351 (75 FR 38014, July 1, 2010), for certain The Boeing Company Model 737–200, 737–300, 737–400, and 737–500 series airplanes identified in Boeing Special Attention Service Bulletin 737–35–1099, Revision 1, dated April 23, 2009.

Applicability

(c) This AD applies to B/E Aerospace, Continuous Flow Passenger Oxygen Mask Assembly; Part Numbers 174006–(), 174080–(), 174085–(), 174095–(), 174097–(), and 174098–() as listed in B/E Aerospace Service Bulletin 174080–35–04, Rev 000, dated September 6, 2010, that are installed on any aircraft except for those Boeing airplanes specified in the ADs referenced in paragraphs (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5) of this AD.

Note: The service bulletin lists the part numbers with a suffix of "XX." The TSO Index lists the part numbers with the suffix of "()." For the purposes of this AD, we have used "()."

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 35: Oxygen.

Unsafe Condition

(e) This AD was prompted by a report that several oxygen mask assemblies with broken in-line flow indicators were found following a mask deployment. We are issuing this AD to prevent the in-line flow indicators of the oxygen mask assembly from fracturing and separating, which could inhibit oxygen flow to the masks. This condition could consequently result in occupants developing hypoxia following a depressurization event.

Compliance

(f) Comply with this AD within the compliance times specified, unless already done.

Records Check/Inspection

(g) Within 36 months after the effective date of this AD or within 6,500 hours time-in-service after the effective date of this AD, whichever occurs first, do the following:

(1) Do a records check to determine if any oxygen mask assembly part number listed in B/E Aerospace Service Bulletin 174080–35–04, Rev 000, dated September 6, 2010, is installed. If you cannot positively determine the manufacturer and part number of any oxygen mask assembly installed, do a general visual inspection to determine if any oxygen mask assembly part number listed in B/E Aerospace Service Bulletin 174080–35–04, Rev 000, dated September 6, 2010, is installed. If you can positively determine that no oxygen mask assembly part number listed in B/E Aerospace Service Bulletin 174080–35–04, Rev 000, dated September 6, 2010, is installed, no further action is required by this paragraph.

(2) If, as a result of the records check/inspection required in paragraph (g)(1) of this AD, you determine that an oxygen mask assembly part number listed in B/E Aerospace Service Bulletin 174080–35–04, Rev 000, dated September 6, 2010, is installed, inspect the oxygen mask assembly to determine if the in-line flow indicator must be replaced following paragraph II.A. of B/E Aerospace Service Bulletin 174080–35–04, Rev 000, dated September 6, 2010. If you can positively determine that the in-line flow indicator does not require replacement, no further action is required by this paragraph.

Modification/Replacement

(h) Before further flight after the inspection in paragraph (g)(2) of this AD where you determined the in-line flow indicator must be replaced, modify the oxygen mask assembly by replacing the in-line flow indicator following B/E Aerospace Service Bulletin 174080–35–04, Rev 000, dated September 6, 2010. As an alternative to modifying the oxygen mask assembly, you may replace the oxygen mask assembly with an airworthy oxygen mask assembly FAA-approved for installation on the aircraft.

Parts Installation

(i) As of the effective date of this AD, no person may install a B/E Aerospace oxygen mask assembly having a part number listed in B/E Aerospace Service Bulletin 174080–35–04, Rev 000, dated September 6, 2010, with a manufacturing date on or after January 1, 2002, and before March 1, 2006, on any aircraft, unless it has been modified in accordance with the requirements of paragraph (h) of this AD.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) Before using any approved AMOC, notify your Principal Maintenance Inspector or Principal Avionics Inspector, as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

Related Information

(k) For more information about this AD, contact David Fairback, Aerospace Engineer, Wichita ACO, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4154; fax: (316) 946–4107; e-mail: *david.fairback@faa.gov*.

(l) For service information identified in this AD, contact B/E Aerospace, 10800 Pflumm Road, Lenexa, Kansas 66215; telephone: 913–888–9800; fax: 913–469–8419; Internet: *http://www.beaerospace.com*. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

Issued in Kansas City, Missouri, on February 15, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–4046 Filed 2–22–11; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2003–0167; FRL–9270–2]

Protection of Stratospheric Ozone: Amendments to the Section 608 Leak Repair Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: EPA issued a proposed rule in the December 15, 2010, **Federal Register** proposing changes to the leak repair regulations promulgated under Section 608 of the Clean Air Act Amendments of 1990. In response to stakeholder requests, this action reopens the public comment period through March 25, 2011.

DATES: Comments, identified by docket ID number EPA–HQ–OAR–2003–0167, must be received on or before March 25, 2011.

ADDRESSES: Submit your comments to docket EPA–HQ–OAR–2003–0167 by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the on-line instructions for submitting comments.

E-mail: a-and-r-Docket@epa.gov.

Mail: Environmental Protection Agency. EPA Docket Center (EPA/DC), Mailcode 6102T, Attention Docket ID No. EPA–HQ–OAR–2003–0167, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Hand Delivery: Public Reading Room, Room 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2003–0167. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available: *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy.

Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ross Brennan, Stratospheric Protection Division, Office of Atmospheric Programs; Environmental Protection Agency, Mail Code 6205J, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number (202) 343–9226; fax number (202) 343–2338; e-mail address *brennan.ross@epa.gov.* More information about EPA's leak repair requirements under Section 608, including a copy of the proposed rule, is available at *http://epa.gov/ozone/title6/608/leak.html.*

SUPPLEMENTARY INFORMATION:

Background

The statutory and regulatory background is described in detail in the December 15, 2010, notice of proposed rulemaking (75 FR 78558). EPA has proposed to lower the leak repair trigger rates for comfort cooling, commercial refrigeration, and industrial process refrigeration and air-conditioning equipment with refrigerant charges greater than 50 pounds of ozone-depleting substances. This action proposes to streamline existing required practices and associated reporting and recordkeeping requirements by establishing similar leak repair requirements for owners or operators of comfort cooling, commercial refrigeration, and industrial process refrigeration appliances. This action also proposes to reduce the use and emissions of class I and class II controlled substances (such as but not limited to CFC–11, CFC–12, HCFC–123, and HCFC–22) by requiring verification and documentation of all repairs, retrofit or retirement of appliances that cannot be sufficiently repaired; replacement of appliance components that have a history of failures; and recordkeeping of the determination of the full charge and the fate of recovered refrigerant.

This Action

EPA has received a request to provide additional time for public comment on the proposed rule. We believe that the request is reasonable and that a further 30 days for additional public comment is appropriate, since it will provide affected entities with necessary time to complete analysis and comment on the proposal. This action therefore reopens the comment period for 30 days. We intend to issue a final rule as expeditiously as possible following consideration of the comments and information we receive.

Dated: February 16, 2011.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2011–3992 Filed 2–22–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapters I through VII

[FRL–9270–8; EPA–HQ–OA–2011–0154, –0155, –0156, –0157, –0158, –0159, –0160, –0161, –0162, –0163, –0164, –0165, –0166, –0167, –0168]

Improving EPA Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for comment; notice of public meeting.

SUMMARY: On January 18, 2011, President Obama issued Executive Order 13563, "Improving Regulation and Regulatory Review," and called on all Federal agencies to conduct a "retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome and to modify, streamline, expand, or repeal them in accordance with what has been learned." EPA seeks public input on the design of a plan to use for periodic retrospective review of its regulations.

DATES: Comments must be received on or before March 20, 2011. A public meeting will be held on March 14, 2011 in Arlington, VA.

ADDRESSES: You may submit your comments, identified by Docket ID No. EPA–HQ–OA–2011–0154, –0155, –0156, –0157, –0158, –0159, –0160, –0161, –0162, –0163, –0164, –0165, –0166, –0167 or –0168 by any one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ImprovingRegulations.SuggestionBox@epa.gov*
- *Fax:* 202–566–9744
- *Mail:* Send a copy of your comments and any enclosures to: Improving Regulations Docket, Environmental Protection Agency, EPA Docket Center, Mailcode: 2822T, 1200 Pennsylvania Ave., NW, Washington, DC 20460.
- *Hand Delivery:* Improving Regulations Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OA–2011–0154, –0155, –0156, –0157, –0158, –0159, –0160, –0161, –0162, –0163, –0164, –0165, –0166, –0167, –0168. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov.* The *http://www.regulations.gov* website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section II of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Improving Regulations Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Improving Regulations Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: For further information on this document, please contact Stuart Miles-McLean, Office of Regulatory Policy and Management (1803A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: 202–564–6581; fax number: 202–564–7322; e-mail address: *ImprovingRegulations.SuggestionBox@epa.gov.* If you have questions concerning the public meetings, contact Lucinda Power, Office of Regulatory Policy and Management (1806A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: 202–566–0356; fax number: 202–564–0965; e-mail address: *ImprovingRegulations.SuggestionBox@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

EPA's mission is to protect human health and the environment. Among the Agency's goals are taking action on climate change and improving air quality; protecting America's waters; cleaning up communities and advancing sustainable development; ensuring the safety of chemicals and preventing pollution; and enforcing environmental laws. As part of these efforts, EPA has developed a number of regulations that protect Americans from significant risks to human health and the environment where they live, learn and work.

A. Submitting Comments

At this time, EPA seeks help in designing the plan it will use for periodic review of regulations. Section II of this notice provides several specific comment categories to focus the Agency's review based upon specific regulatory impacts or program areas. In the following section you will find a non-exhaustive list of issues or impacts to help you formulate your ideas, though it is not intended to restrict the issues that you may wish to address.

Please be as specific as possible when submitting your comments. In offering your input, EPA requests that you include an explanation as to why you believe a regulation should be modified, streamlined, expanded or repealed; any data or other information that supports your explanation; and suggestions on how the Agency can better achieve the regulatory program's objective. Please provide citation if you reference a specific regulation.

While it is EPA's aim is to define a method and schedule for periodically identifying certain significant rules that warrant repeal or modification because they are no longer justified or necessary, this review may also reveal that an existing rule is needed, but has not operated as well as expected, and that a stronger, expanded, or somewhat different approach is justified.

EPA is accepting your comments from now through 03/20/2011. Although the Agency won't be able to respond to every individual comment, your input is valued and your ideas merit careful consideration. By late May or early June, you will have the chance to read our retrospective review plan at *http://www.epa.gov/improvingregulations,* as well as an initial list of regulations that we plan to review first.

As you comment, EPA requests that you keep these key considerations in mind:

- EPA must uphold its mission to protect human health and the environment.
- EPA's plan will be tailored to reflect its resources, rulemaking history, and volume.
- A number of laws already direct the Agency to regularly review certain regulations. Your input is requested on developing a plan that is integrated with those existing requirements.
- See *http://www.epa.gov/improvingregulations* for additional information and updates.

B. Public Meetings

EPA will hold a public meeting at Hilton Arlington, 950 N Stafford Street, Arlington, VA on March 14, 2011. Registration information and updates are available at *http://www.epa.gov/improvingregulations/meeting.html.* In addition, EPA plans to host a variety of meetings in regional offices in March 2011. The specific location names and addresses for these regional meetings will be posted as they become available at *http:/www.epa.gov//improvingregulations/meeting.html.*

II. Design of Plan for Periodic Retrospective Review

EPA's plan will create a defined method and schedule for periodically identifying certain significant regulations that are obsolete, unnecessary, unjustified, excessively burdensome, or counterproductive. Also, it will consider how best to strengthen, complement or modernize rules where necessary or appropriate—including, if relevant, undertaking new rulemaking. To help EPA design the plan, you are invited to provide input on specific considerations related to how the agency should conduct these periodic retrospective reviews of existing regulations.

To assist you in focusing your comments or recommendations, EPA has provided three categories relating to issue/impact, program area, or a multipurpose general area. These are not intended to restrict the issues that you may wish to address. The following sections present a series of questions under these categories as a guide for making recommendations on the design of EPA's periodic retrospective review plan. If you wish to submit comments, please address them to the appropriate docket labeled in each section or by mail as described in the **ADDRESSES** section above.

The first set of questions relating to the design plan are not intended to be restrictive but are meant to assist you in formulating your comments.

- How should EPA identify candidate regulations for periodic retrospective review?
- What criteria should EPA use to prioritize regulations for review?
- How should EPA's review plan be integrated with its existing requirements to conduct retrospective reviews?
- How often should EPA solicit input from the public?
- What should be the timing of any given regulatory review (e.g., should a regulation be in effect for a certain amount of time before it is reviewed)?

A. Issue or Impact Areas for Consideration

To more specifically focus your response, the following questions listed by issue or impact area may assist but are not meant to limit you in providing EPA input on its retrospective review plan.

1. Integration and Innovation

Submit a comment on integrating regulations or achieving innovation to the "Improving Regulations: Integration and Innovation" docket (EPA–HQ–OA–2011–0161). Use the following questions to guide your comments:

- Which regulations could achieve the intended environmental results using less costly methods, technology, or innovative techniques? How could the regulations be changed? What data support this?
- Which regulations could be improved by harmonizing requirements across programs or agencies to better meet the regulatory objectives? What suggestions do you have for how the Agency can better harmonize these requirements?
- Which regulations have requirements that are overlapping and could be streamlined or eliminated? What suggestions do you have for how the Agency could modify the regulations? Be specific about how burden can be reduced from gained efficiencies related to streamlining the requirements.
- What opportunities exist for the Agency to explore alternatives to existing regulations? How can these alternatives be designed to ensure that environmental objectives are still met?

2. Environmental Justice/Children's Health/Elderly

Submit a comment related to environmental justice, children's health, or the elderly to the "Improving Regulations: EJ, Children & Elderly" docket (EPA–HQ–OA–2011–0168). Use the following questions to guide your comments:

- Which regulations have exacerbated existing impacts or created new impacts on vulnerable populations such as low-income or minority populations, children or the elderly? Which ones and how? What suggestions do you have for how the Agency could change the regulations? What data support this?
- Which regulations have failed to protect vulnerable populations (minority or low-income, children or elderly) and why?
- Which regulations could be streamlined, modified, tightened, or expanded to mitigate or prevent impacts to vulnerable populations (minority or low-income, children or elderly)? What suggestions do you have for changing the regulations? What data support this?

3. Science/Obsolete/Technology Outdated

Submit a comment related to the science in regulations that you believe is outdated or which relies on outdated technology. Use the "Improving Regulations: Science/Obsolete/Technology Outdated" docket (EPA–HQ–OA–2011–0162) and the following questions to guide your comments:

- Which regulations could be modified because the underlying scientific data has changed since the regulation was issued, and the change supports revision to the original regulation? What data support this? What suggestions do you have for changing the regulations?
- Which regulations have achieved their original objective and have now become unnecessary or obsolete? What data support this? What suggestions do you have for how the Agency could modify, streamline, expand, or repeal the regulation?
- Have circumstances surrounding any regulations changed significantly such that the regulation's requirements should be reconsidered? Which regulations? What data support this? What suggestions can you provide the Agency about how these regulations could be changed?
- Which regulations or reporting requirements have become outdated? How can they be modernized to accomplish their regulatory objectives

better? What data support this? What suggestions do you have for how the Agency could change the regulations?

• Which regulations have new technologies that can be leveraged to modify, streamline, expand or repeal existing requirements? What data support this? What suggestions do you have for how the Agency could change these regulations?

4. State, Local and Tribal Governments

Submit a comment related to state/local/tribal government issues in the "Improving Regulations: State, Local and Tribal governments" docket (EPA–HQ–OA–2011–0163). Use the following questions to guide your comments:

• Which regulations impose burden on state, local or tribal governments? How could these regulations be changed to reduce the burden without compromising environmental protection?

• What opportunities are there within existing regulations to better partner with state, local and/or tribal governments? If so, do you have suggestions for how to better utilize those opportunities?

5. Least Burdensome/Flexible Approaches

Provide comment on a regulation that is burdensome or could be more flexible in the "Improving Regulations: Least Burden/Flexible Approaches" docket (EPA–HQ–OA–2011–0165). Use the following questions to guide your comments:

• Which regulations have proven to be excessively burdensome? What data support this? How many facilities are affected? What suggestions do you have for reducing the burden and maintaining environmental protection?

• Which regulations impose paperwork activities (reporting, recordkeeping, or 3rd party notifications) that would benefit from online reporting or electronic recordkeeping? Tell us whether regulated entities have flexibility in providing the required 3rd party disclosure or notification. What data support this? What suggestions do you have for how the Agency could change the regulation?

• Which regulations could be made more flexible within the existing legal framework? What data support this? What suggestions do you have for how the Agency could change the regulations to be more flexible?

6. Benefits and Costs

Submit a comment related to benefits and costs in the "Improving Regulations: Benefits and Costs" docket (EPA–HQ–OA–2011–0158). Use the following questions to guide your comments:

• Which regulations have high costs and low benefits? What data support this?

• Which regulations could better maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity)? What data support this? What quantitative and qualitative benefits and costs justify your suggestion (recognizing that some benefits and costs are difficult to quantify)?

7. Small Business

Submit a comment related to small business impacts in the "Improving Regulations: Small Business" docket (EPA–HQ–OA–2011–0164). Use the following questions to guide your comments:

• Which regulations have large impacts on small businesses? How could these regulations be changed to reduce the impact while maintaining environmental protection? Are there flexible approaches that might help reduce these impacts? Which of these regulations have high costs and low benefits? What data support this?

• Are there any regulations where flexible approaches for small businesses have proven successful and could serve as a model? Where else and how could these approaches be utilized?

8. Compliance

Submit a comment related to compliance in the "Improving Regulations: Compliance" docket (EPA–HQ–OA–2011–0166). Use the following questions to guide your comments:

• Which regulations have complicated or time consuming requirements? To what extent are alternative compliance tools available? Could the regulations be modified to improve compliance? What data support this?

• Which regulations or regulated sectors have particularly high compliance? How could the factors or approaches that lead to high compliance be utilized in other regulations and sectors? What data is available to support this?

9. Economic Conditions/Market

Submit a comment about economic conditions and/or markets in the "Improving Regulations: Economic Conditions/Market" docket (EPA–HQ–OA–2011–0167). Use the following questions to guide your comments:

• Which regulations have impacted an industry sector(s) that was hard hit by high unemployment in the past three years? What changes to the regulation would promote economic growth or job creation without compromising environmental protection? What data support this?

• How can regulations spur new markets, technologies and new jobs? What suggestions do you have to support this idea?

• Which regulations have impeded economic growth in an affected industry sector? What information is available to support this? How could the regulations be modified to improve both economic growth and environmental protection? What data support this?

• Where can EPA examine market-based incentives as an option to regulation? What program would you design that utilizes market-based incentives and ensures environmental objectives are still met?

• How can a regulation be improved so as to create, expand or transform a market?

• Which regulations could be modified so as to invite public/private partnerships, and how?

B. Program Area

Use one of the dockets listed below to provide comments related to a specific program area.

• "Improving Regulations: Air" docket—EPA–HQ–OA–2011–0155

• "Improving Regulations: Pesticides" docket—EPA–HQ–OA–2011–0157

• "Improving Regulations: Toxic Substances" docket—EPA–HQ–OA–2011–0159

• "Improving Regulations: Waste" docket—EPA–HQ–OA–2011–0160

• "Improving Regulations: Water" docket—EPA–HQ–OA–2011–0154

C. General Category

Use the Improving Regulations: General docket (EPA–HQ–OA–2011–0156) to submit an idea for how best to promote retrospective analysis of rules. This docket may also be used for any comment that:

• Pertains to more than one issue/impact and/or program area.

• Doesn't relate to any of the other docket categories listed in this section.

EPA welcomes comment and feedback from all parties on the issues listed herein. The Agency is collecting this information for its planning purposes and is not bound to further action or response. All submissions will be made publically available on *http://www.regulations.gov.*

Dated: February 18, 2011.

Michael Goo,

Associate Administrator, Office of Policy.

[FR Doc. 2011–4152 Filed 2–22–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 11–224; MB Docket No. 11–20; RM–11619]

Television Broadcasting Services; Kalispell, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Montana State University, requesting that we add channel *46, Kalispell, Montana, which is already allotted to the Pre-Transition DTV table of Allotments, to the Post-Transition Table of DTV Allotments.

DATES: Comments must be filed on or before March 25, 2011, and reply comments on or before April 11, 2011.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Margaret L. Miller, Esq., Dow Lohnes PLLC, 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC 20036–6802.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, *adrienne.denysyk@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 11–20, adopted February 7, 2011, and released February 9, 2011. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts (other than *ex parte* presentations exempt under 47 CFR 1.1204(a)) are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1208 for rules governing restricted proceedings.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

§ 73.622 [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Montana, is amended by adding channel *46 at Kalispell.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 2011–4008 Filed 2–22–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2010–0016; MO 92210–0–0008–B2]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List Thorne's Hairstreak Butterfly as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 12-month finding on a petition to list Thorne's hairstreak butterfly (*Callophrys [Mitoura] gryneus thornei*) as endangered under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information, we find that listing Thorne's hairstreak butterfly is not warranted at this time. However, we ask the public to submit to us any new information that becomes available concerning the threats to Thorne's hairstreak butterfly or its habitat at any time.

DATES: The finding announced in this document was made on February 23, 2011.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R8–ES–2010–0016. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011; by telephone at 760–431–9440; or by facsimile to 760–431–9624. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act)

(16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that listing a species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we determine whether the petitioned action is: (a) Not warranted; (b) warranted; or (c) warranted, but immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

Previous Federal Actions

On August 8, 2006, we published 90-day findings for both the Thorne's hairstreak and the Hermes copper butterflies in the **Federal Register** (71 FR 44980 and 71 FR 44966, respectively). The findings concluded that the petitions and information in our files did not present substantial scientific or commercial information indicating that listing Thorne's hairstreak butterfly or Hermes copper butterfly may be warranted. For a detailed history of Federal actions involving Thorne's hairstreak butterfly prior to the 2006 90-day finding, please see the August 8, 2006, **Federal Register** publication (71 FR 44980).

On March 17, 2009, Center for Biological Diversity (CBD) and David Hogan filed a complaint for declaratory and injunctive relief challenging the Service's decision not to list Thorne's hairstreak butterfly and Hermes copper butterfly as endangered or threatened under the Act. In a settlement agreement dated October 23, 2009 (Case No. 09–0533 S.D. Cal.), the Service agreed to submit a new 90-day petition finding for Thorne's hairstreak butterfly to the **Federal Register** by April 2, 2010. As part of the settlement agreement, we agreed to evaluate the October 25, 2004, petition filed by CBD and David Hogan, supporting information submitted with the petition, and information available in the Service's files, including information that has become available since the publication of the negative 90-day finding in the **Federal Register** on August 8, 2006. If the 90-day finding determined that listing may be warranted, we agreed to submit a 12-month finding for Thorne's hairstreak butterfly to the **Federal Register** by March 4, 2011. On April 5, 2010, we published a 90-day finding that determined listing of Thorne's hairstreak butterfly as endangered may be warranted (75 FR 17062). This notice constitutes the 12-month finding on the petition to determine whether listing the Thorne's hairstreak butterfly as endangered is warranted.

Subspecies Information

It is our intent to discuss only those topics directly relevant to the listing of Thorne's hairstreak butterfly under the Act in this 12-month finding. For more information on the taxonomy, biology, and ecology of Thorne's hairstreak butterfly, please refer to the 90-day finding published in the **Federal Register** on April 5, 2010 (75 FR 17062). That document is available on the Internet at *http://www.fws.gov/Carlsbad* and at *http://www.regulations.gov* (under docket number FWS–R8–ES–2010–0016).

Taxonomy and Nomenclature

Thorne's hairstreak butterfly was first described as *Mitoura thornei* based on a specimen collected in 1972 near Otay Lake by Fred Thorne (Brown 1983, p. 246). Biologists questioned the classification of Thorne's hairstreak butterfly as a species. Shields (1984, p. 53) relegated it to a brown subspecies of the juniper hairstreak (species or subspecies name *loki*) as *Mitoura loki thornei.* Scott (1986, p. 374) also classified it as a subspecies, but under the name *Callophrys gryneus thornei,* in part because he did not consider any taxa in *Mitoura* as a genus distinct from *Callophrys.* The classification of *Mitoura thornei* was evaluated in 1999 by the Committee on Scientific Names of North American Butterflies (Committee). The Committee reached consensus based on publications and arguments presented, and accepted classification of Thorne's hairstreak butterfly as a subspecies of the species *Callophrys gryneus* (Burns *et al.* 2000, p. 9). Subsequently, the Committee prepared the second edition of the Checklist of English Names of North American Butterflies in which Thorne's hairstreak butterfly was classified as *Callophrys gryneus thornei* (Cassie *et al.* 2001, p. 9). Van Buskirk (2004) reviewed Thorne's hairstreak butterfly classification for the Service; this review concurred with the Committee's decision to classify Thorne's hairstreak butterfly as *Callophrys gryneus thornei.*

The classification of Thorne's hairstreak butterfly continues to be a focus of investigation. Recent work that includes mitochondrial DNA and allozyme analysis indicates that Thorne's hairstreak is closely related to juniper hairstreak (Shiraiwa 2010, p. 1; Pratt 2010, in press), as originally suggested by Shields (1984, p. 53). Pratt's (2010, in press, p. 9) work also appears to support classifying *Mitoura* as a genus or subgenus, which would classify Thorne's hairstreak butterfly as a subspecies of *Mitoura loki* (the juniper hairstreak). Thorne's hairstreak butterfly has always been classified as a separate entity at some level (species or subspecies), and therefore it is a listable entity under the Act. As described above, recent work indicates that it is best classified as a subspecies close to the juniper hairstreak. The monophyletic group *Mitoura* may warrant recognition as a separate genus in the future.

In this 12-month finding, we follow the most recent recommendation from the North American Butterfly Association Names Committee (Cassie *et al.* 2001, p. 9) and treat Thorne's hairstreak butterfly as a subspecies named *Callophrys gryneus thornei.*

Habitat

Thorne's hairstreak butterfly habitat is characterized by interior cypress woodland, also recently known as *Callitropsis forbesii* Woodland Alliance (Tecate cypress stands) (Sawyer *et al.* 2009, pp. 101–102) dominated by its host plant, *Hesperocyparis forbesii* (Tecate cypress). This habitat is found on Otay Mountain, intermixed with chaparral between approximately 800 feet (ft) (244 meters (m)) and 3,290 ft (1003 m) in elevation (*i.e.,* the mountain peak). Adult Thorne's hairstreak butterflies are known to feed on the nectar of *Eriogonum fasciculatum* (California buckwheat), *Ceanothus tomentosus* (Ramona lilac), and *Lotus scoparius* (deerweed) in the vicinity of stands of *H. forbesii* (Faulkner and Klein 2005, p. 33). A recent study indicates *Asclepias fascicularis* (narrowleaf milkweed) is also used as an adult nectar source throughout the subspecies' range (Lucas 2009, pers. comm.). It is likely that Thorne's hairstreak butterfly, like most butterflies, uses a variety of plant species as nectar sources, and frequency of use is primarily dependent on availability.

Thorne's hairstreak butterfly deposits eggs and feeds exclusively on its larval host plant, *Hesperocyparis forbesii,* to complete its life cycle (Brown 1983, p. 252). Williams and Congedo (2008)

studied aspects of larval host plant use by Thorne's hairstreak butterfly. They recorded number of eggs per *H. forbesii* tree, placement of eggs within trees, location of feeding damage on trees, and larval food choice, comparing mature (cone-bearing) trees to immature trees (no cones) (Williams and Congedo 2008, pp. 6–13). No significant difference was found between use of young or recent shoots (appressed scale leaves and stems) from mature and immature trees (Williams and Congedo 2008, pp. 15–18). Williams and Congedo (2008, p. 14) also noted that Thorne's hairstreak butterflies occupied stands of trees not more than 5 years old, and that approximately 7 percent of new fire regrowth trees were producing cones. Williams and Congedo (2008, p. 19) concluded larvae could develop by feeding on tissue from immature or mature trees; thus the availability of host plants for egg deposition in an occupied area is not likely limiting. These results confirm the hypothesis drawn from adult presence in new post-fire growth that oviposition is not limited by host plant age, as discussed in the 2006 and 2010 90-day findings (71 FR 44980 and 75 FR 17062, respectively). Therefore, the best available information indicates Thorne's hairstreak butterfly larvae can utilize any available life stage of *H. forbesii* to complete its life cycle.

Nectar source abundance is also a key factor in determining Thorne's hairstreak butterfly habitat suitability. Van Reusel *et al.* (2006, pp. 201, 207) studied a related species of hairstreak butterfly and, using predictive models, found that host plant and nectar source were the primary factors predicting green hairstreak butterfly distribution. Nectar sources are critical to support courtship, mating, and oviposition behaviors of butterflies such as Thorne's hairstreak butterfly (Williams and Congedo 2008, p. 20).

Biology

The 90-day finding (75 FR 17062; April 5, 2010) incorrectly characterized the flight seasons as described in Faulkner and Klein (1995). Thorne's hairstreak butterfly has two flight periods per year (bivoltine). The first adult emergence and abundance peak occurs in late February through March and possibly early April, depending on winter rainfall. A second adult abundance peak occurs in late May or early June, with a possible third in September if there are summer monsoon rains (Klein 2010a, p. 1).

Distribution and Population Status

We evaluated available information on the current range, historical range, and population status of Thorne's hairstreak butterfly to develop the most current understanding of its distribution and status.

Our knowledge of Thorne's hairstreak butterfly's range has greatly increased over the past 10 years. The known pre-2003 fire distribution of Thorne's hairstreak butterfly approximately encompassed the northeast quadrant of Otay Mountain, including locations just southwest of the peak and a lower-elevation location east of Otay Lakes (Klein 2010a, p. 2). The 2003 Mine Fire (also called the Otay Fire) perimeter encompassed all habitats where butterflies had been observed; however, post-fire surveys revealed a cluster of locations occupied by Thorne's hairstreak butterflies in the southwest quadrant of Otay Mountain outside of the mapped fire perimeter (Klein 2010a, p. 11). The 2007 Harris Fire perimeter encompassed the lower north and east slopes of Otay Mountain, affecting a large portion of cypress forest in the northwest quadrant near Otay Lakes. Post-2007 fire surveys on Otay Mountain conducted by Lucas in 2010 included all areas within the species' range on Otay Mountain except known historical locations at the easternmost edge of the species' range (Lucas 2010), thus we are uncertain about the current status of the species at this easternmost edge of the species range. Only one stand of trees (that was not a known historical location for Thorne's hairstreak butterflies) was surveyed in the eastern area; no butterflies were observed (Lucas 2010; Klein 2010a, pp. 2, 12). Lucas also recorded a new Thorne's hairstreak butterfly occurrence location in an area within the northwest quadrant of Otay Mountain in 2010, thus expanding the pre-2007 fire known range (Lucas 2010). The newly discovered northwestern Otay Mountain observation location is over 1.5 miles (mi) (2 kilometers (km)) from the nearest previous Thorne's hairstreak butterfly observation in the northeast quadrant (Lucas 2010; Klein 2010a, pp. 2, 12).

Surveys by Lucas on Otay Mountain in 2010 revealed the presence of Thorne's hairstreak butterfly throughout the majority of *Hesperocyparis forbesii* that burned in the 2003 fire, the 2007 fire, and in areas burned by both fires (unpublished data 2010).

Additionally, the known distribution of Thorne's hairstreak butterfly on Otay Mountain is greater than was known at the time of the 2004 petition. Therefore, the persistence of the butterfly in previously burned areas and the increase in the known butterfly distribution indicate that Thorne's hairstreak butterfly has either successfully recolonized burned areas or persisted within mapped fire perimeters on Otay Mountain.

A previously unknown Thorne's hairstreak butterfly observation was also documented in 2010 off of Otay Mountain at a lower elevation in approximately 1 ac (0.4 ha) of atypical, created habitat, which suggests that Thorne's hairstreak butterfly either has the ability to recolonize small *Hesperocyparis forbesii* stands at lower elevations or that this observation may represent a new occurrence that was not previously documented. Of note, this new location:

(1) Is in the Otay River Valley, at the mouth of O'Neal Canyon (Busby 2010a, pp. 1–2; Cooper 2010a, p. 1) and is outside the known Thorne's hairstreak butterfly range;

(2) Is over 2.5 mi (4 km) from, and over 1000 ft (305 m) lower in elevation than, the nearest occupied site upslope at the base of Otay Mountain (as described by Lucas 2010, slide 15; Google Earth imagery);

(3) Is approximately 500 ft (152 m) lower in elevation than the lowest previously recorded observation east of Otay Lake (site 5 described by Klein 2010a, p. 2); and

(4) Occurs on land conserved and managed by the City of Chula Vista, which is the only known occupied area located entirely outside of the Bureau of Land Management (BLM) Otay Mountain Wilderness (Klein 2010b, p. 1).

The June 15 (Busby 2010a, pp. 1–2; Cooper 2010a, p. 1) and June 23, 2010, (Anderson 2010, p. 1; Cooper 2010b, pp. 1–2) observations of adult butterflies at the Otay River Valley location are also the latest ever recorded for Thorne's hairstreak butterfly during a flight season (Klein 2010b, p. 1). This late record is likely the result of unusually cool spring weather in 2010, creating prolonged and cooler moist river valley microclimate conditions. A June 1996 satellite image does not show *Hesperocyparis forbesii* stands at this location (Google Earth historical imagery accessed 2010). Although we do not have documentation of how or why the *H. forbesii* was established at this location, analysis of historical satellite imagery from 1996 to 2010 and observations of individuals familiar with the site lead us to believe the trees were planted as seedlings from a nursery to replace native vegetation removed when a gas utility pipeline was installed in 1996 (Anderson 2010, p. 1;

Cooper 2010b, pp. 1 – 2; Busby 2010b, p. 1). Regardless, occupancy of this newly discovered site in created habitat supports the hypothesis that Thorne's hairstreak butterfly is opportunistic and relatively resilient (*i.e.,* able to persist at a new, lower elevation level in more moist microhabitat conditions than previously known to occur).

Results from a previous hairstreak butterfly movement study also support the hypothesis of natural colonization. Specifically, Robbins and Small (1981, p. 308) studied movement of hairstreak butterflies (Lycaenidae: Eumaeini) in Panama and reported:

(1) Observations of 128 species (47 percent of the known Panamanian hairstreak butterfly fauna) blown across the landscape by winds with speeds of 10 to 25 miles per hour (mi/hr) (15 to 40 kilometers per hour (km/hr));

(2) More than 80 percent of these species were blown through habitats where they are not normally found;

(3) Some species normally found in high-elevation habitats were observed 3 mi (5 km) from the nearest upland habitat; and

(4) Seventy percent of the observed specimens were females (whereas typical sex ratios for hairstreak butterfly populations have more males than females), and 74 percent of captured females (a subset of those observed) had been mated.

Robbins and Small (1981, pp. 311–12) concluded hairstreak butterflies are likely to be dispersed by wind and can successfully colonize suitable downwind habitats. In southern California, annual Santa Ana winds often produce westerly winds of 25 to 37 mi/hr (40 to 60 km/hr) from fall through spring (Westerling *et al.* 2004, p. 290), and likely disperse insects. We believe this type of wind-assisted dispersal occurs at Otay Mountain, and is a likely explanation of how Thorne's hairstreak butterfly became established in the Otay River Valley stand of *Hesperocyparis forbesii.*

The 90-day finding (75 FR 17062; April 5, 2010) stated the current distribution of *Hesperocyparis forbesii* in the Otay Mountain area encompasses 454 ac (183 ha) post-2003 fire (Lucas 2009, unpublished data), and compared this to historical Otay Mountain records that indicate *H. forbesii* once covered approximately 7,500 ac (3,035 ha) (California Natural Diversity Database (CNDDB) GIS database 2003). After further evaluation of all available host plant distribution information, we determined the acreage values cannot be compared as described in the 90-day finding because the values are a result of different mapping methodologies. Data from 2007 revealed that *H. forbesii* on Otay Mountain encompasses approximately 7,556 ac (3,058 ha) (CNDDB GIS database 2007). Additionally, the San Diego Association of Governments (SANDAG) produced a vegetation map of Southern Interior Cypress Forest on Otay Mountain equal to 5,693 ac (2,304 ha) (SANDAG GIS database, 1995). The smallest and most recent *H. forbesii* distribution area estimate of 454 ac (183 ha) cited in the 90-day finding (75 FR 17062; April 5, 2010) reflects stand-scale mapping focused on groups of 20 or more trees greater than 3.3 ft (1 m) in height, with smaller stands included when encountered incidentally (Forister and Lucas 2009, p. 1).

Comparison of the CNDDB and SANDAG vegetation databases also indicates differences in mapping methodology. The two vegetation-based mapping methods vary in the areas mapped as occupied by *Hesperocyparis forbesii,* with only approximately half the area mapped in 1995 (SANDAG GIS database, before the 2003 fire) overlapping occupied areas mapped in 2007 (CNDDB GIS database, after the 2003 fire). Field inspection of three *H. forbesii* stands along the Minewawa truck trail that were within the 2003 fire perimeter revealed new growth of immature cypress throughout (Anderson 2010, p. 1). One *H. forbesii* location did not correspond with any location mapped by Lucas (2010 unpublished data), while the other two corresponded with Lucas's mapped areas and observed Thorne's hairstreak butterfly observations (Lucas 2010, unpublished data). Furthermore, approximately one-third of mapped Thorne's hairstreak butterfly observation locations fall outside all three mapped *H. forbesii* distributions discussed above.

Our current analysis of Thorne's hairstreak butterfly habitat distribution indicates most of the habitat is relatively protected. Approximately 88 percent of cypress woodland is within the BLM Otay Mountain Wilderness area, and 11 percent is within the planning area of the San Diego Subarea Plan under the San Diego MSCP (*see* Factor A discussion below). The remaining one percent is privately owned. Occupied habitat within the City of Chula Vista Subarea Plan planning area is approximately 1 ac (0.4 ha; see above discussion).

To summarize, available vegetation mapping of cypress forest can approximate the Thorne's hairstreak butterfly population distribution, while Lucas' data map of cypress forest (which is on a stand (sub-population)-scale) is not yet comprehensive and thus cannot approximate the Thorne's hairstreak butterfly population distribution. It is not clear if either scale of cypress mapping corresponds with Thorne's hairstreak butterfly habitat distribution at either a butterfly population distribution or sub-population level. As a result, we are unable to accurately estimate the change in distribution of Thorne's hairstreak butterfly habitat on Otay Mountain because of the differing mapping techniques and because *Hesperocyparis forbesii* stands are still recovering from the 2003 and 2007 fires.

Finally, Geographic Information System (GIS) analysis of historical fire perimeters indicates the majority of Thorne's hairstreak butterfly habitat has burned only once or twice in the past 100 years (*see* Factor A discussion below). All available data indicate that because cypress forest regrows after fire, and Thorne's hairstreak butterflies recolonize cypress forest regardless of host plant age, the distribution of habitat has not changed significantly following the recent fires.

While individual Thorne's hairstreak butterflies are likely lost when fire burns stands of *Hesperocyparis forbesii* (as discussed in the 90-day finding (75 FR 17062; April 5, 2010)), more recent data (discussed above) support the hypothesis that Thorne's hairstreak butterfly populations are relatively resilient to fire. Discovery of occupied habitat in 2007 and 2010 within the 2003 and 2007 fire perimeters, and the newly colonized created habitat in 2010 in the Otay River Valley (see above discussion) indicates Thorne's hairstreak butterflies can move relatively considerable distances, readily colonize new stands of *H. forbesii,* and increase their numbers to detectable levels over a period of 5 to 10 years. The recently recorded Otay River Valley location represents a confirmed Thorne's hairstreak butterfly range expansion over the past 10 years. Furthermore, we have no evidence supporting a permanent range contraction or curtailment anywhere throughout the subspecies' known distribution.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In making this 12-month finding, information pertaining to Thorne's hairstreak butterfly in relation to the five factors provided in section 4(a)(1) of the Act is discussed below. In making our 12-month finding on the petition, we considered and evaluated the best available scientific and commercial information.

In considering whether a species warrants listing under any of the five factors, we look beyond the species' exposure to a potential threat or aggregation of threats under any of the factors, and evaluate whether the species responds to those potential threats in a way that causes actual impact to the species. The identification of threats that might impact a species negatively is not sufficient to compel a finding that the species warrants listing. The information must include evidence indicating that the threats are operative and, either singly or in aggregation, affect the status of the species. Threats are significant if they drive, or contribute to, the risk of extinction of the species, such that the species warrants listing as endangered or threatened, as those terms are defined in the Act.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The following potential threats that may affect the habitat or range of Thorne's hairstreak butterfly, discussed in this section, include: (1) Wildfire, (2) climate change as it relates to wildfire (climate change is discussed further under Factor E below), (3) habitat fragmentation, and (4) road and firebreak construction required for national security and fire management (U.S. Customs and Border Protection) activities. We also discuss benefits to Thorne's hairstreak butterfly and its habitat in the Habitat Conservation Plans (HCPs) and Natural Community Conservation Plans (NCCPs) section below. In the 90-day finding (75 FR 17062; April 5, 2010), we indicated that based on the petition, recreational traffic, prescribed burns, and grazing were potential threats to Thorne's hairstreak butterfly. In the development of this 12-month finding, we further investigated the possibility that these activities were potential threats and found no evidence that recreational traffic, prescribed burns, or grazing were occurring or affecting the species or its habitat. Therefore, we have determined that these factors are not threats to the subspecies (see discussions below under the Road and Firebreak Construction section, the Factor D discussion, and the Factor E discussion).

Wildfire and Climate Change Related to Wildfire

Fire regimes are based on the temporal and spatial patterns of ignition sources, fuel, weather, and topography (Pyne *et al.* 1996, p. 48). It is also important to understand that fire severity, or the ecological impact of a fire and recovery of an ecosystem (Keeley and Fotheringham 2003, p. 231), can be different from fire intensity, or the energy released per length of fire front (Borchart and Odion 1995, p. 92). Additionally, large fires are not always equivalent to high-intensity fires (Keeley and Fotheringham 2003, p. 231). This is particularly important when assessing effects of fire on chaparral communities. Fire often burns in a mosaic pattern at different intensities, thereby resulting in differing levels of effects on particular species and habitats. Therefore, the inclusion of a specific mapped fire perimeter is not a reliable indicator of the level of mortality or habitat destruction.

According to Keeley and Fotheringham (2003, pp. 242–243), the historical natural fire regimes in southern California were likely characterized by many small lightning-ignited fires in the summer, a few large fires in the fall, and a variable fire intensity. However, the fire frequency (number of fires in a given area, not necessarily overlapping) has increased in North American Mediterranean Shrublands in California since about the 1950s. Southern California has demonstrated the greatest increase in wildfire ignitions, primarily due to an increase in population density beginning in the 1960s, and thus accessibility to new areas (Keeley and Fotheringham 2003, p. 240).

We analyzed the past 40 years of fire patterns at Otay Mountain and found that the spatial and temporal historical fire regime described by Keeley and Fotheringham (2003) is confirmed at this location as illustrated in Table 1.

TABLE 1—SPATIAL AND TEMPORAL HISTORICAL FIRE REGIME AND FIRE IMPACT ON SOUTHERN INTERIOR CYPRESS FOREST FOR OTAY MOUNTAIN, SAN DIEGO COUNTY, CALIFORNIA

Year	Total fire perimeter (acres)	Number of fires	Cypress forest within fire perimeter (acres)	Cypress forest within fire perimeter (hectares)
1971	56.04	1	18.97	7.67
1976	1,656.05	1	28.68	11.6
1978	600.48	1	22.67	9.17
1979	7,557.45	3	1,062.83	430.11
1980	3,313.64	1	36.97	14.96
1981	371.67	1	60.5	24.48
1982	1,076.56	4	124.42	50.35
1983	666.87	2	106.91	43.26
1985	188.37	1	19.14	7.74
1986	965.5	1	0.34	0.13
1987	54.71	1	3.54	1.43
1989	129.8	1	0.06	0.02
1990	63.33	1	7.4	2.99
1993	641.76	1	24.24	9.81
1994	2,983.35	1	103.09	41.71
1995	156.37	2	14.73	5.96
1996	18,460.02	5	4,186.08	1,694.05

TABLE 1—SPATIAL AND TEMPORAL HISTORICAL FIRE REGIME AND FIRE IMPACT ON SOUTHERN INTERIOR CYPRESS FOREST FOR OTAY MOUNTAIN, SAN DIEGO COUNTY, CALIFORNIA—Continued

Year	Total fire perimeter (acres)	Number of fires	Cypress forest within fire perimeter (acres)	Cypress forest within fire perimeter (hectares)
1999	118.48	1	11.14	4.51
2003	44,884.10	1	7,548.9	3,054.95
2005	359.15	2	37.94	15.35
2007	90,738.46	1	1,279.76	517.9
2008	124.75	2	0.67	0.27

The concern for wildfire effects to Thorne's hairstreak butterfly is primarily associated with loss of *Hesperocyparis forbesii* trees prior to the production of seed cones, which can result in the extirpation of a given stand (see Habitat section above). *Hesperocyparis forbesii* is a small tree generally associated with "chaparral ecosystems in southern California and northern Baja California, Mexico" (de Gouvenain and Ansary 2006, p. 447). Chaparral is considered a crown-fire ecosystem, meaning ecosystems which "have endogenous mechanisms for recovery that include resprouting from basal burrs and long-lived seed banks that are stimulated to germinate by fire" (Keane *et al.* 2008, p. 702). These ecosystems are also resilient to high-intensity burns (Keeley *et al.* 2008, p. 1545). Seed cones of western cypress (*Hesperocyparis*) mature in the second year, generally remain closed at maturity, and open after many years or in response to fire (Adams *et al.* 2009, p. 180). As a result, *H. forbesii,* like most western cypresses, has serotinous or closed-cones that allow the species to withstand fire.

While Zedler (1977, p. 456) indicated that cone production for *Hesperocyparis forbesii* begins around 10 years of age, Dunn (1986, p. 369) reported production "begins at about 5–7 years of age, but is sporadic until the trees reach about 30 years in age." Dispersal and germination of seeds is predominantly a result of fire, which results in death of the parent plant (Zedler 1977, p. 456). However, Zedler (2010a, pp. 1–2) stated that "*H. forbesii* does not require fire to germinate and establish seedlings, although the frequency with which germination without fire occurs in natural stands is low, and the survival of seedlings that do germinate is probably even lower." Moreover, given that *H. forbesii* is a long-lived (more than 100 years) tree (Markovchick-Nicholls 2007, p. 4), with some individual trees on Guatay Mountain estimated to exceed 150 years in age (Dunn 1986, p. 369), the need for reproduction in the absence of fire is low.

Hesperocyparis forbesii biology, status, and management needs were recently discussed at a workshop on June 16, 2010 (Burrascano 2010, pp. 1–4). Some attendees indicated that the *H. forbesii* stands on Otay Mountain are declining over the long term and that increased fire frequency poses a threat to the tree (Burrascano 2010, pp. 1–4); however, this assumes a significant correlation between the increased fire frequency in southern California and a decrease in the burn return interval within any given occupied cypress stand. Regarding the likelihood of extirpation, Zedler (2010b, p. 2) stated that "it is very unlikely this species will be [extirpated] in 100 years, almost zero chance in 50." Specifically, Zedler (2010b, p. 1) believes the statistical probability of *H. forbesii* being extirpated from Otay Mountain (assuming relative independence of stands) is very low or insignificant. Zedler (2010b, p. 1) also concluded that as the number of fires in any area of ground per time increases, the average area burned in any given fire decreases; hence, to extirpate *H. forbesii* completely would require almost a saturation of ignitions, which is also unlikely. This information supports the unlikely extirpation of *H. forbesii* in the foreseeable future.

Regarding the likelihood of decline, Markovchick-Nicholls (2007, p. v) used available data and stochastic matrix population models to assess the current risk of decline of *Hesperocyparis forbesii* under a range of southern California fire regime scenarios, and to rank management options and research priorities. Her model results suggest that *H. forbesii* will decline under most fire regime scenarios over the long term, but that this trend may be difficult to detect in the short term (Markovchick-Nicholls 2007, p. 41). Model results indicated that fire breaks could be highly effective for *H. forbesii* conservation, if designed to minimize removal of *H. forbesii* (Markovchick-Nicholls 2007, p. 41). In contrast, collection of seed in older *H. forbesii* stands for distribution in reproductively immature stands poses much less risk to the species, but also has much less dramatic effects on the persistence of the species than fire breaks do, even if successful (Markovchick-Nicholls 2007, p. 41). Current BLM policy (BLM 2010a, pp. 6–7) dictates any future firebreak and road construction projects in Thorne's hairstreak butterfly habitat on Otay Mountain minimize impacts to the butterfly (see also Factor D discussion below), while reducing the threat of fire to the subspecies and its host plant by slowing the spread of fire once ignited.

To address the issue of fire and how it relates to Thorne's hairstreak butterfly habitat loss, we conducted several GIS-based analyses of past fire frequencies and burn patterns on Otay Mountain. As described in the 90-day finding (71 FR 44980; August 8, 2006), we used GIS data in our files to overlay *Hesperocyparis forbesii* distribution on the map provided in the petition illustrating multiple fires that have burned through and near Thorne's hairstreak butterfly locations over the past century, and determined the majority of *H. forbesii* was within one or two fire perimeters during the 93-year period from 1910 to 2003. Furthermore, as discussed above, the areas of overlap between the 2003 and 2007 fire perimeters were relegated to lower elevation areas where host plant density is lowest. This result corresponds with the most conservative fire regime scenario in the Markovchick-Nicholls models discussed above (46 years), which is the scenario where the population appeared the most stable (Markovchick-Nicholls 2007, p. 41). The above information further supports the unlikely decline or extirpation of *H. forbesii* in the foreseeable future.

Using the most recent estimate (based on 2010 data) of 7,549 ac (3,055 ha) (CNDDB GIS Database 2010) of cypress forest on Otay Mountain, we calculated the overlap for the three largest fires in the last 15 years (1996, 2003, and 2007).

In 1996, 55 percent of cypress forest was within a mapped fire perimeter. In 2003, 100 percent of the cypress forest was within the mapped fire perimeter. In 2007, 17 percent of cypress forest was within the mapped fire perimeter. One hundred percent of the cypress forest within the 1996 fire perimeter was also within the 2003 fire perimeter, whereas only 17 percent of the area within the 2003 perimeter was also within the 2007 fire perimeter. Over the last 15 years, only 9 percent of cypress forest was within all three fire perimeters, and one approximately 97-ac (39-ha) stand near the peak within the mapped 2003 fire perimeter is estimated to have not burned in approximately 40 years (Allison 2011, p. 1). The 2007 Harris Fire perimeter encompassed the lower north and east slopes of Otay Mountain, overlapping with the 2003 burn perimeter primarily around the base of the mountain, indicating the pattern observed by Dunn (1984, p. 90) has not changed significantly over the past 27 years (1983–2010). In 1986, Dunn (p. 374) concluded most of the cypress on Otay Mountain were reaching full maturity and a fire would result in little damage to the population, because it would in fact result in maximum seed dispersal and recruitment.

Despite multiple fires over the last four decades on and around Otay Mountain (see Table 1), our analysis confirms Dunn's conclusion that fire does not have a significant impact on the cypress forest on Otay Mountain (Dunn 1986, p. 374). A recent survey documented that not all *Hesperocyparis forbesii* individuals within mapped fire perimeters are burned (Anderson 2010, p. 1). Only 11 of 122 Thorne's hairstreak butterfly observation locations recorded in 2010 by Lucas (unpublished data 2010) and only 17 percent of the associated cypress forest fell within both the 2003 and 2007 mapped fire perimeters (Carlsbad Fish and Wildlife Office GIS database). Throughout the areas that burned again in 2007, cypress regrowth and Thorne's hairstreak butterflies were observed in 2010. Furthermore, recent border fence construction and other enforcement activities in the Otay Mountain Wilderness area have reduced foot traffic by illegal immigrants from Mexico (Ford 2010, p. 1), reducing the likelihood of fire ignition resulting from this source.

As described above, Santa Ana winds and human-caused ignitions are important factors in southern California's shrubland and forest fire regimes. Because the Santa Ana wind events in fall and winter are driven by large-scale patterns of atmospheric circulation, researchers have developed projections for Santa Ana Occurrence (SAO) using global climate models (GCM) (Miller and Schlegel, 2006, p. 1). Results obtained from one GCM do not show an increase in the total number of annual SAOs; however, they did find a temporal shift in SAOs, with a decrease during the months of September and October and an increase in December (Miller and Schlegel, 2006, p. 3). The effects of this shift, coupled with predicted decreased precipitation (*see* Climate Change section in Factor E discussion below) to fire regime are unclear; however, December and January are typically the wettest months on record in Southern California (National Oceanic and Atmospheric Administration 2005). This temporal shift of SAOs from a time following the driest period of the year (May to October) to after the fall and winter rains begin (Scripps Institute of Oceanography 2010) would likely reduce the potential for and impact of wind and human-caused ignitions in southern California.

The output from climate change models predicts a 50-percent contraction in mixed evergreen woodland and shrubland vegetation (general vegetation types that may include *Hesperocyparis forbesii* stands) in California for the time period from 2070 to 2099 (Lenihan *et al.* 2003, p. 1674) (for recent information on future climate predictions, see Factor E discussion). Lenihan *et al.* (2003, p. 1674) found that the most prominent feature of the vegetation class's response to the drier model scenario was the advancement of grassland into the historical range of mixed evergreen woodland and shrubland. Such vegetation changes could reduce host plant and nectar source availability for Thorne's hairstreak butterfly, as woody vegetation declines and grasses replace native flowering forbs. Based on the above discussion, nectar source availability may be a determining factor in Thorne's hairstreak butterfly occupancy; however, the general climate change vegetation effect models (Lenihan *et al.* 2003, p. 1674) found the simulated response to changes in precipitation were complex, involving changes in tree-grass competition mediated by fire.

We are unable to predict the changes in climate, especially on a localized, small scale such as Otay Mountain, as well as what the impacts to Thorne's hairstreak butterfly and its habitat may be because this area is small relative to the resolution of vegetation change prediction models (which used climate models of intermediate scale to predict vegetation responses) and contains a relatively unique community dominated by the rare endemic cypress (see also Factor E discussion). While uncertainty exists regarding the potential effects of climate change on wildfire and habitat loss, and despite the increasing frequency of fires in southern California, the best available information does not indicate the average burn return interval per given area of cypress forest is decreasing, and it does indicate ignition sources on Otay Mountain have been reduced compared to historical levels; therefore, wildfire has not been, and is not likely to be, a significant threat to the Thorne's hairstreak butterfly or its habitat now or in the foreseeable future.

Habitat Fragmentation

We examined the possibility of habitat fragmentation affecting Thorne's hairstreak butterfly. The connectivity of habitat occupied by a butterfly population is not defined by host plant distribution at the scale of host plant stands or patches, but rather by adult butterfly movement that results in interbreeding (*see* Service 2003a, pp. 22, 162–165). Any loss of resource contiguity on the ground that does not affect butterfly movement, such as burned vegetation or road construction through stands of cypress, may degrade habitat but does not fragment a population. Therefore, in order for butterfly habitat to be considered fragmented, movement must be prevented by a barrier, or the distance between remaining host plants where larvae develop must be greater than adult butterflies will move to mate or deposit eggs. If it occurred, habitat fragmentation might create smaller, more vulnerable populations (see Factor E discussion below); however, the best available information indicates that habitat fragmentation has not occurred on Otay Mountain (*see* Distribution and Population Status section above). *Hesperocyparis forbesii* has demonstrated an ability to recolonize after fire events on Otay Mountain, and data obtained since publication of the 2010 90-day finding (75 FR 17062) indicate Thorne's hairstreak butterfly is able disperse through wind events between any temporarily isolated patches of *H. forbesii* (*see* Distribution and Population Status section above). Therefore, we have determined that habitat fragmentation is not a threat to the subspecies now, nor is it likely to become so in the foreseeable future.

Road and Firebreak Construction

Thorne's hairstreak butterfly habitat is relatively protected from most sources of habitat destruction, modification, or

curtailment because approximately 99 percent of its potential habitat (mapped Interior Cypress Forest vegetation; CNDDB GIS database 2007) is within publicly owned areas that are conserved and managed, primarily within the BLM Otay Mountain Wilderness and San Diego Multiple Species Conservation Program (MSCP) subarea plan preserves (see Habitat Conservation Plans (HCPs) and Natural Community Conservation Plans (NCCPs) section and Factor D discussion below).

Although road and firebreak construction has occurred in the past in stands of *Hesperocyparis forbesii* where Thorne's hairstreak butterflies have been observed, these impacts have been relatively limited based on our qualitative comparison of Thorne's hairstreak butterfly and host plant locations with Google Earth satellite imagery of roads and firebreaks. Because U.S. Customs and Border Protection recently completed construction of the border fence and expanded the associated "pack trail" into a wider "truck trail" to accommodate vehicles, the need for further significant Border Patrol-related construction activities is not anticipated (Ford 2010, p. 1). Any future firebreak and road construction projects that do occur in Thorne's hairstreak butterfly habitat on Otay Mountain will be planned so as to minimize impacts to the butterfly (see also Factor D below), while reducing the threat of fire to the subspecies and its host plant by slowing the spread of fire once ignited (BLM 2010a, pp. 6–7). Finally, Williams and Congedo (2008, p. 19) concluded that existing traffic corridors on Otay Mountain did not appear to be detrimental to Thorne's hairstreak butterfly unless increasing human traffic contributes to increasing fire danger.

The status of the Otay Mountain area as predominantly wilderness area and preserve (which are managed) indicates this area is unlikely to receive increased legal human traffic. Furthermore, as noted above, recent border fence construction and other enforcement activities in the Otay Mountain Wilderness area have reduced illegal human traffic (Ford 2010, p. 1), thereby reducing the likelihood of fire ignition by this source. Therefore, road and firebreak construction is not a significant threat to the subspecies now, nor is it likely to become so in the foreseeable future.

Habitat Conservation Plans (HCPs) and Natural Community Conservation Plans (NCCPs)

Habitat conservation plans (HCPs) and natural community conservation plans (NCCPs) benefit Thorne's hairstreak butterfly through conservation, management, and monitoring. Habitat conservation plans are developed under section 10 of the Act to support issuance of permits that authorize the limited incidental take of listed species in return for conservation and management of the species and their habitats. The NCCP program is a cooperative effort involving the State of California and numerous private and public partners to protect regional habitats and species. The primary objective of NCCPs is to conserve natural communities at the ecosystem scale while accommodating compatible land uses. NCCPs help identify, and provide for, the regional or area-wide protection of plants, animals, and their habitats while allowing compatible and appropriate economic activity. Many NCCPs are developed in conjunction with HCPs prepared under the Act.

The San Diego Multiple Species Conservation Program (MSCP) is a subregional HCP and NCCP made up of several subarea plans that has been in place for more than a decade. Under the umbrella of the MSCP, each of the 12 participating jurisdictions is required to prepare a subarea plan that implements the goals of the MSCP within that particular jurisdiction.

Both Thorne's hairstreak butterfly and *Hesperocyparis forbesii* are covered species under the County of San Diego MSCP Subarea Plan, although neither the butterfly nor *H. forbesii* are covered species under the City of Chula Vista MSCP Subarea Plan. The County of San Diego MSCP Subarea Plan encompasses the majority (859 ac (348 ha)) of *H. forbesii* habitat (Interior Cypress Forest; CNDDB GIS database 2007) outside of the Otay Mountain Wilderness. The remainder of the *H. forbesii* habitat outside of the Otay Mountain Wilderness (approximately 60 ac (24 ha)) is privately owned in an Amendment Area for the San Diego MSCP Planning Area (see discussion below). Within the County of San Diego MSCP Subarea Plan, over 99 percent of *H. forbesii* habitat (Tecate Cypress Forest) is planned for conservation and management (County of San Diego 2008a, Part 3, Section 2, p. 7), and the majority has already been acquired for conservation.

As noted above, Thorne's hairstreak butterfly and *Hesperocyparis forbesii* are covered species under the subarea plan (Service 1998, p. 6), which requires protection of Thorne's hairstreak butterfly host plants and local chaparral species used as nectar sources. The Framework Management Plan for the County of San Diego Subarea Plan under the MSCP (County of San Diego 2008b, p. 2; Framework Management Plan) requires the use of specific adaptive management techniques directed at the conservation and recovery of covered species, such as actions that assure wildfires do not occur too frequently in areas where species are sensitive to fire. The Framework Management Plan also provides for biological monitoring and preparation of an annual report, and based upon this review and biological monitoring effort, adjustments in the management goals can be made as necessary (County of San Diego 2008b, p. 2). Because Thorne's hairstreak butterfly is required to be conserved and adaptively managed and monitored under the County of San Diego Subarea Plan, we anticipate land management to protect Thorne's hairstreak butterfly and its habitat will continue to be implemented under the County of San Diego Subarea Plan.

Additionally, the Memorandum of Understanding (MOU) on cooperation in habitat conservation planning and management issued by BLM in 1994, in conjunction with the development of the County of San Diego Subarea Plan under the MSCP (BLM 1994, pp. 1–8), also applies to the Otay Mountain Wilderness because it falls entirely within the boundary of this subarea plan. As outlined in the MOU (BLM 1994, p. 3), BLM is committed to managing their lands (*i.e.,* Otay Mountain Wilderness) to "conform with" the County of San Diego Subarea Plan, which in turn requires protection of Thorne's hairstreak butterfly's larval host plant, *Hesperocyparis forbesii,* and local chaparral species used as nectar sources. Therefore, protections provided by the County of San Diego Subarea Plan under the MSCP to Thorne's hairstreak butterfly and its habitat also apply to the Otay Mountain Wilderness.

The 90-day finding (75 FR 17062; April 5, 2010) states, "Approximately 48 ac (19 ha) of *Hesperocyparis forbesii* habitat fall under the [County of San Diego Subarea Plan], which strives for fire management and prevention to restore the previous 25-year [burn return interval]"; however, we have since determined this statement is not accurate. The statement was based on the 1994 BLM South Coast Resource Management Plan that specifies a minimum planned 25-year burn return interval for controlled burns in *H. forbesii* habitat "east of the Minewawa truck trail on the Otay Mountain [Wilderness]" (BLM 1994, p. 21). The Minewawa Truck Trail runs from the peak at Doghouse Junction, north to Otay Lakes Road, dividing the northern half of Otay Mountain into east and

west quarters. As discussed above, per an MOU, BLM has committed to manage its lands in a manner that complements the County of San Diego Subarea Plan; this management commitment was mistakenly attributed to that HCP in the 90-day finding. The 48-ac (19-ha) estimate was based on the area of *H. forbesii* stands mapped by Lucas (Forister and Lucas 2009, pp. 1–2) and located outside the Otay Mountain Wilderness. Therefore, the 48-ac (19-ha) area estimate is not accurate with regard to the amount of *H. forbesii* habitat (see Distribution and Population Status section above) that is managed by the County of San Diego. Our estimate of the habitat managed by the County of San Diego under their subarea plan is 859 ac (348 ha) (see discussion above). Finally, BLM does not have any plans to conduct controlled burns (see Factor D discussion below) nor is it committed to maintain a 25-year burn return interval for such burns (BLM 1994, p. 21), and the County of San Diego Subarea Plan includes the assurance that wildfires will not occur too frequently in areas where species are sensitive to fire. The BLM draft revised South Coast Resource Management Plan specifically includes a goal of restoring burn return interval to 50 years through fire prevention or suppression and prescribed burns (see Factor D discussion below). Current BLM prescribed burn practices preclude burning of any *H. forbesii* habitat that would not enhance cypress stand viability or that would negatively affect Thorne's hairstreak butterfly (see Factor D discussion below). Therefore, the misrepresented regulatory 25-year burn return interval issue is not a valid concern with regard to Thorne's hairstreak butterfly conservation.

The City of Chula Vista Subarea Plan under the MSCP includes a preserve that encompasses the newly discovered Otay River Valley occupied site (see Distribution and Population Status section above). Thorne's hairstreak butterfly and *Hesperocyparis forbesii* are not covered species under this subarea plan. However, all lands preserved under the Chula Vista Subarea Plan are adaptively managed and maintained to:

(1) Ensure the long-term viability and sustainability of native ecosystem function and natural processes throughout the Preserve;

(2) Protect existing and restored biological resources from the impacts of human activities within the Preserve while accommodating compatible uses;

(3) Enhance and restore, where feasible, appropriate native plant associations and wildlife connections to adjoining habitat to provide viable wildlife and sensitive species habitat;

(4) Facilitate monitoring of selected target species, habitats, and linkages to ensure long-term persistence of viable populations of priority plant and animal species; and

(5) Ensure functional habitats and linkages for those species (Service 2003b, pp.18, 70, FWS–SDG–882.1).

We believe these management prescriptions adequately protect Thorne's hairstreak butterfly and its habitat within the preserve, and the adaptive management measures of the Chula Vista Subarea Plan allow for adjustment of preserve management, as appropriate, to conserve this newly discovered population of Thorne's hairstreak butterfly.

One relatively small area of occupied cypress forest (approximately 60 ac (24 ha) composed of four butterfly observation locations) in the southwest foothills of Otay Mountain east of Otay Mesa is privately owned and not within an approved subarea plan, but falls within the MSCP planning area where a new subarea plan is being developed (i.e., a County of San Diego MSCP "Amendment Area") (CNDDB GIS Database 2010). While these habitats are not currently protected from threats to Thorne's hairstreak butterfly habitat by conservation or management, the majority of this area is also occupied by the endangered Quino checkerspot butterfly (*Euphydryas editha quino*), and Thorne's hairstreak butterfly habitat is therefore already afforded some indirect protection under section 9 of the Act.

Summary of Factor A

We evaluated several factors with the potential to destroy, modify, or curtail Thorne's hairstreak butterfly's habitat or range, including decreasing burn return intervals, climate change related to wildfire, habitat fragmentation, and road and firebreak construction. We also evaluated the benefits to Thorne's hairstreak butterfly and its habitat associated with HCPs and NCCPs. Wildfire can negatively affect the species' habitat and in particular its host plant. However, our analysis does not indicate wildfire events have deviated from historical fire frequency or burn return interval patterns. Despite two recent large fires (2003 and 2007), Thorne's hairstreak butterfly has not only survived or recolonized habitats within mapped recent fire perimeters, it has expanded its range. In addition, while uncertainty exists regarding the potential effects of climate change on wildfire and habitat loss, the best available information regarding decreased burn return interval indicates the indirect effects of climate change on Thorne's hairstreak butterfly habitat are not threats to the subspecies now, nor are they predicted for the future. We have also determined the best available information indicates habitat fragmentation does not occur within the range of Thorne's hairstreak butterfly. We further determined that impacts to Thorne's hairstreak butterfly habitat resulting from road and firebreak construction have been relatively limited and are not anticipated to increase in the future. Additionally, approximately 99 percent of all potential Thorne's hairstreak butterfly habitat (cypress woodland within existing County of San Diego Subarea Plan preserves, the City of Chula Vista Subarea Plan preserve, and Otay Mountain Wilderness Area) is conserved and managed to benefit both the species and its host plant. Therefore, we believe existing HCPs and NCCPs provide protection for Thorne's hairstreak butterfly habitat. Based on our review of the best available scientific and commercial information, we conclude that Thorne's hairstreak butterfly is not threatened by the present or threatened destruction, modification, or curtailment of its habitat or range now or in the foreseeable future.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We have no information to indicate that overutilization for commercial, recreational, scientific, or educational purposes is currently a threat to the Thorne's hairstreak butterfly, nor do we anticipate that it will become a threat in the future. Therefore, based on our review of the best available scientific and commercial information, we conclude that Thorne's hairstreak butterfly is not threatened by overutilization for commercial, recreational, scientific, or educational purposes now or in the foreseeable future.

Factor C. Disease or Predation

Disease

Our review of the best available scientific and commercial data found nothing to indicate that disease is a threat to Thorne's hairstreak butterfly now or in the foreseeable future.

Predation

Predation (including parasitism) is a factor that is known to cause mortality in butterflies, and therefore could potentially threaten any butterfly

species. Faulkner and Klein (2005, p. 34) stated that birds may consume Thorne's hairstreak butterfly larvae, although we are not aware of any data that indicate bird predation is a significant threat to Thorne's hairstreak butterflies. Brachonid wasps (parasitoid insects that deposit eggs in their host and kill it when offspring emerge as adults) have been observed near the host plant, but there has been no documentation of predation on Thorne's hairstreak butterflies (Faulkner and Klein 2005, p. 34; Klein 2010a p, 5). One potential larval predator observed during the 2007 season in large numbers at one occupied site is the nonnative seven-spotted ladybird beetle (*Coccinella septempuctata*) (Klein 2010a, pp. 5, 12); however, we are not aware of any data indicating the beetles have negative effects on Thorne's hairstreak butterfly.

Heavy predation and parasitism of adult insects and their progeny is a common ecological phenomenon, and most species have evolved under conditions where high mortality due to natural enemies has shaped their evolution (see Schmid-Hempel 1995, p. 255; Ehrlich *et al.* 1998). Our review did not reveal any specific information regarding predation of Thorne's hairstreak butterflies, nor do we have any indication that predation will become a threat in the foreseeable future. Therefore, based on our review of the best available scientific and commercial information, we conclude Thorne's hairstreak butterfly is not threatened by predation either now or in the foreseeable future.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

The Act requires us to examine the adequacy of existing regulatory mechanisms with respect to threats that may place Thorne's hairstreak butterfly in danger of extinction or likely to become so in the future. Existing regulatory mechanisms that may have an effect on potential threats to Thorne's hairstreak butterfly can be placed into two general categories: (1) Federal mechanisms, and (2) State mechanisms.

Federal Mechanisms

The Otay Mountain Wilderness Act (1999) (Pub. L. 106–145) and BLM management policies provide protection for the majority of occupied Thorne's hairstreak butterfly habitat (over 90 percent of all recorded butterfly observation locations). The Otay Mountain Wilderness Act directs that the Otay Mountain designated wilderness area (i.e., Otay Mountain Wilderness; 18,500 ac (7,486 ha)) be managed in accordance with the provisions of the Wilderness Act of 1964 (16 U.S.C. 1131 *et seq.*). The Wilderness Act of 1964 strictly limits use of wilderness areas, imposing restrictions on vehicle use, new developments, chainsaws, mountain bikes, leasing, and mining, in order to protect the natural habitats of the areas, maintain species diversity, and enhance biological values. Lands acquired by BLM within the Otay Mountain Wilderness boundaries become part of the designated wilderness area and are managed in accordance with all provisions of the Wilderness Act and applicable laws (for additional information on applicable laws and management of the Otay Mountain Wilderness, see discussions below).

Thorne's hairstreak butterfly is a BLM-designated sensitive species (BLM 2010b, p. 3). BLM-designated sensitive species are those species requiring special management consideration to promote their conservation and reduce the likelihood and need for future listing under the Act. This status makes Thorne's hairstreak butterfly conservation a management priority in the Otay Mountain Wilderness (see BLM 2008, p. 6).

Fire management activities occur on Otay Mountain as part of the BLM's current (1994) South Coast Resource Management Plan. Available information provided by BLM summarizes these ongoing management actions (Howe 2010, p. 1):

(a) The California Department of Forestry and Fire Protection (CAL FIRE) San Diego Unit is under a contractual agreement to provide fire suppression services to BLM-administered Public Lands in San Diego County;

(b) Planned fire dispatch for the Otay Mountains Wilderness is five engines, two handcrews, two tanker airplanes, two to three water-drop helicopters, and assorted command and support personnel;

(c) BLM Fire Management provides an Initial Attack Dispatch and Agency Representative to ensure appropriate actions are taken on a fire incident;

(d) On large incidents, several Resource Specialists may form a team to evaluate fire and fire suppression effects. If a determination is made to pursue fire restoration and repair, these specialists would work with Burned Area Emergency Response (BAER) Teams to implement appropriate actions;

(e) Fire Prevention and Law Enforcement patrols occur on Otay Mountain, and the Lyons Peak Lookout Tower (north of the Otay Mountain Wilderness) will reopen to facilitate early fire detection as soon as funding allows (Allison 2011, p. 1); and

(f) The International Fuelbreak is under a Right-of-Way Agreement with CAL FIRE.

At some point in the future on an as-needed basis, additional brush clearing and other fuels modifications, including burning, may occur; however, no plans exist to perform prescribed burns in groves of *Hesperocyparis forbesii* at this time. Any prescribed burning in the future within the Otay Mountain Wilderness would be designed to promote conservation of Thorne's hairstreak butterfly and reduce the likelihood and need for future listing of the subspecies under the Act (see above discussion of BLM-designated sensitive species for more information). Specifically, any future prescribed burns in cypress forest would be limited to low-level understory burns designed to minimize impacts to *H. forbesii* and would only occur where mature trees have reached maximum cone production and burning would likely increase stand viability (Allison 2011, p. 1). Currently, all cypress stands on Otay Mountain are within fire perimeters mapped over the past 10 years; however, there is one approximately 97-ac (39-ha) stand near the peak that is approximately 40 years old, where burning could be prescribed if wildfire does not burn it within the next 10 to 15 years (Allison 2011, p. 1).

We believe the current management regime undertaken by BLM under the existing plan is adequate to protect the subspecies and its habitat from threats. However, BLM is collaborating with the Service to revise the South Coast Resource Management Plan, which covers the Otay Mountain Wilderness. In the current draft revised plan, Thorne's hairstreak butterfly and *Hesperocyparis forbesii* are identified as sensitive species (BLM 2009, p. 3–59), and the plan specifically states the management of these species and their habitats are important because of their close association and the importance of fire cycles to their continued existence. Moreover, one of BLM's primary objectives in the draft revised plan is improved fire management and collaboration with local communities and agencies to prevent wildfires. The draft revised plan specifically includes a goal of restoring fire frequency to 50 years through fire prevention or suppression and prescribed burns; once an area has not burned for 50 years the plan allows for annual prescribed burning of up to 500 ac (202 ha) in the Otay Mountain Wilderness (BLM 2009, pp. 4–171 − 4–172). Actions implemented under the revised plan,

when final, will be designed to promote conservation of Thorne's hairstreak butterfly and its habitat.

State Mechanisms

The California Environmental Quality Act (CEQA) requires review of any project that is undertaken, funded, or permitted by the State or a local governmental agency. If significant environmental effects are identified, the lead agency has the option of requiring mitigation through changes in the project or deciding that overriding considerations make mitigation infeasible (CEQA section 21002). Therefore, protection of sensitive native species through CEQA is dependent upon the discretion of the lead agency involved. The implementation of CEQA encourages protection of Thorne's hairstreak butterfly and *Hesperocyparis forbesii* where projects are undertaken, funded, or permitted by the State or a local governmental agency outside of the Otay Mountain Wilderness, and by CAL FIRE within the wilderness area.

Summary of Factor D

We considered the adequacy of existing regulatory mechanisms to protect Thorne's hairstreak butterfly. The majority (approximately 90 percent) of potential Thorne's hairstreak butterfly habitat is within the BLM Otay Mountain Wilderness, and is conserved and managed to benefit both the species and its host plant. With regard to wildfire in the Otay Mountain Wilderness: (1) Prevention activities are already a focus of management and occur regularly; (2) suppression activities are already a focus of management and occur promptly; and (3) if fire is not frequent enough to reduce fuel load, prescribed burns can occur. Therefore, we believe existing regulatory mechanisms already provide ample regulatory protection of Thorne's hairstreak butterfly from the potential threat of wildfire (see Factor A above for a discussion of wildfire). Based on our review of the best available scientific and commercial information, we conclude Thorne's hairstreak butterfly is not threatened by the inadequacy of existing regulatory mechanisms now, nor is it likely to become so in the foreseeable future.

Factor E. Other Natural or Manmade Factors Affecting The Species' Continued Existence

Natural and manmade threats to the Thorne's hairstreak butterfly include wildfire, small population size, and climate change. Wildfire is briefly discussed under this factor, and wildfire and climate change related to wildfire are discussed in detail under Factor A discussion above. The 90-day finding (75 FR 17062; April 5, 2010) also indicated that grazing and population fragmentation were potential threats to the subspecies. In the development of this 12-month finding, we further investigated these potential threats and found that grazing does not currently occur on Otay Mountain, nor is it planned for the future (Doran 2010, p. 1; Ford 2010, p. 1; Schlachter 2010, p. 1); therefore, it is not a threat to the subspecies at this time, nor is it likely to become so in the foreseeable future. We also determined that population fragmentation for Thorne's hairstreak butterfly is dependent on habitat fragmentation, which is discussed above under Factor A, and is not a threat to the species at this time or in the foreseeable future.

Wildfire

As discussed under Factor A above, wildfire can be a risk factor for Thorne's hairstreak butterfly and its host plant and nectar sources. However, as discussed above under Factor D, existing fire prevention and suppression activities are already in place to minimize the impacts of fire on this species to the maximum extent practicable, and measures are being taken to improve such activities. Although Thorne's hairstreak butterflies can be killed by wildfire, the best available information indicates Thorne's hairstreak butterfly habitat is relatively resilient and can re-colonize areas after fire events.

Small Population Size

Although we do not have data from which to draw conclusions regarding Thorne's hairstreak butterfly population size, we nonetheless considered whether rarity might pose a potential threat to the species. While small populations are generally at greater risk of extirpation from normal population fluctuations due to predation, disease, changing food supply, and stochastic (random) events such as fire, corroborating information regarding threats beyond rarity is needed to meet the information threshold indicating that the species may warrant listing. In the absence of information identifying threats to the species and linking those threats to the rarity of the species, the Service does not consider rarity alone to be a threat. Further, a species that has always had small population sizes or has always been rare, yet continues to survive, could be well-equipped to continue to exist into the future.

Many naturally rare species have persisted for long periods within small geographic areas, and many naturally rare species exhibit traits that allow them to persist despite their small population sizes. Consequently, the fact that a species is rare or has small populations does not necessarily indicate that it may be in danger of extinction now or in the foreseeable future. We need to consider specific potential threats that might be exacerbated by rarity or small population size. Although low genetic variability and reduced fitness from inbreeding could occur, at this time we have no evidence of genetic problems with the Thorne's hairstreak butterfly. Based on the available information, and the fact that Thorne's hairstreak butterfly has survived for an unknown number of years, we conclude that genetic variability and reduced fitness are not imminent threats now, nor do we believe they will become threats in the foreseeable future. Although we have only known of its existence since 1972 (Brown 1983, p. 246), Thorne's hairstreak butterfly has always been endemic to Otay Mountain (Brown 1983; Beztler *et al.* 2003; Faulkner and Klein 2005) and has historically survived fires, drought, and other stochastic events. Therefore, we have no data to indicate that rarity or small population size, in and of themselves, pose a threat to the subspecies at this time or in the foreseeable future.

Climate Change

Downscaled local climate model predictions for Thorne's hairstreak butterfly range indicate a warmer, drier climate in the vicinity of Otay Mountain (downscaled resolution corresponds to the area of Otay Mountain; The Nature Conservancy Climate Wizard 2010). Climate Wizard (The Nature Conservancy 2010) model calculations and predictions for Otay Mountain indicate that the average annual temperature has increased approximately 0.06 degrees Fahrenheit (°F) (0.03 degrees Celsius (°C)) per year for the past 50 years ($p>.001$), will likely increase another 5 °F (2.8 °C) in the next 40 years (medium and high scenarios), and will increase another 6.5 to 7.5 °F (3.6 to 4.2 °C) within the next 70 years (medium and high scenarios). Otay Mountain average annual precipitation has decreased 0 to 0.1 percent per year over the past 50 years ($p=1$), is predicted to decrease by up to 7 percent over the next 40 years, and is predicted to decrease by up to 12 to 13 percent over the next 70 years (medium and high scenarios; The Nature Conservancy Climate Wizard 2010). These environmental factors are the primary driver of (similar but likely at a greater

scale) models that predict increased fire frequency and scope, and possible *Hesperocyparis forbesii* population decline (see Factor A discussion above). However, the models are general and do not enable us to conclude that host plant populations would decline significantly or to predict a decrease of the specific host plants used by Thorne's hairstreak butterfly. It is not clear how predicted environmental changes would directly affect Thorne's hairstreak butterfly and its habitat (*i.e.,* the *H. forbesii*) due to the uncertainty of the models. We are unable to estimate any direct climate change effects to Thorne's hairstreak butterfly populations because the climate tolerances of Thorne's hairstreak butterfly are unknown, although they seem to do well at all climate extremes within their current range (all elevations). Because we believe the available modeling information on a potential decrease in the *H. forbesii* population (as described above) is too general to be a reliable source to predict changes in the Thorne's hairstreak butterfly population, we are relying on the ecology of the host plant and Zedler (2010) to help us ascertain the likelihood of the loss of the host plant and thus Thorne's hairstreak butterfly. Specifically (and as described in the Wildfire and Climate Change Related to Wildfire section above), Zedler (2010b, p. 2) concluded that it is unlikely the species would be extirpated in 100 years in part because the statistical probability of *H. forbesii* being extirpated from Otay Mountain is very low or insignificant. Therefore, the Thorne's hairstreak butterfly's distribution seems currently, and likely to remain limited by the distribution of its host plant rather than climate. Thus there is no indication that changes in climate would affect the distribution of Thorne's hairstreak butterfly. Unlike models used to predict vegetation changes (such as those described above under Factor A), no niche models or similar analyses have been conducted to determine potential direct (climate suitability) or indirect effects (effects of climate on habitat suitability) to the butterfly. Therefore, available data is not adequate to evaluate the potential direct effects of predicted climate changes on Thorne's hairstreak butterfly or to indicate that the species is currently in danger of extinction now or in the foreseeable future.

Based on a review of the best available scientific and commercial data regarding wildfire, small population size, and climate change, we found no reliable evidence that other natural or manmade factors affecting the continued existence of the Thorne's hairstreak butterfly are a threat to the subspecies either now or in the foreseeable future.

Summary of the Five Factors

This status review found no significant threats to Thorne's hairstreak butterfly related to Factors A, B, C, D, or E, as described above.

We find that the best available information for Factor A, including information on the potential effects of wildfire, climate change related to wildfire, habitat fragmentation, and road and firebreak construction, and the beneficial effects of HCPs and NCCPs, indicates that Thorne's hairstreak butterfly is not threatened by the present or threatened destruction, modification, or curtailment of its habitat or range. Analysis of historical fire patterns on Otay Mountain and recolonization of habitat following fire indicate wildfire and road and fire break construction has not fragmented or reduced habitat in occupied areas. While uncertainty exists regarding the potential effects of climate change on wildfire and habitat loss, the best available information regarding decreased burn return interval indicates this is not a significant threat to the subspecies. Furthermore, habitat conservation plans (HCPs) and natural community conservation plans (NCCPs) benefit Thorne's hairstreak butterfly, *Hesperocyparis forbesii,* and their habitat through conservation, management, and preservation.

The available information concerning overutilization (Factor B) and predation (Factor C) does not indicate that the Thorne's hairstreak butterfly is threatened by these factors. We find that the best available information concerning Factor D (Inadequacy of Existing Regulatory Mechanisms) indicates that the Thorne's hairstreak butterfly is not threatened by the inadequacy of existing regulations.

Finally, we find that the best available information concerning Factor E (Other Natural or Manmade Factors Affecting the Species' Continued Existence) indicates that the Thorne's hairstreak butterfly is not threatened individually or cumulatively by the effects of wildfire, small population size, or climate change. Post-fire surveys indicate Thorne's hairstreak butterflies recolonized all habitat affected by large fires in 2003 and 2007 that had previously been documented to be occupied (this excluded the recently discovered stand within the City of Chula Vista Subarea Plan because it was discovered after the fires), indicating that the butterfly is not restricted to isolated patches. Additionally, available data do not suggest that rarity or small population size, in and of themselves, pose a threat to the subspecies at this time or in the foreseeable future.

Finding

As required by the Act, we conducted a review of the status of the Thorne's hairstreak butterfly and considered the five factors in assessing whether the Thorne's hairstreak butterfly is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the Thorne's hairstreak butterfly. We reviewed the petition, information available in our files, and other available published and unpublished information, and we consulted with experts knowledgeable about Thorne's hairstreak butterfly, habitat experts, and representatives from the BLM and local jurisdictions.

During our status review for this species, it has become evident that many threat issues are speculative or are associated with predicted future climate changes, with no historical or current documented direct impacts to the species or its habitat relating to these issues. Our review of the best available scientific and commercial information pertaining to the five threat factors does not support a conclusion that there are independent or cumulative threats of sufficient imminence, intensity, or magnitude to indicate that Thorne's hairstreak butterfly is in danger of extinction (endangered), or likely to become endangered within the foreseeable future (threatened), throughout its range. Therefore, we have determined that the Thorne's hairstreak butterfly does not meet the definition of an endangered species or a threatened species under the Act and, as a result, does not warrant listing under the Act at this time.

Significant Portion of the Range

Having determined that Thorne's hairstreak butterfly does not meet the definition of an endangered or a threatened species, we must next consider whether there are any significant portions of the range where Thorne's hairstreak butterfly is in danger of extinction or is likely to become endangered in the foreseeable future.

On the basis of our review, we found no geographic concentration of threats either on public or private lands to suggest that Thorne's hairstreak

butterfly may be in danger of extinction in that portion of its range. We found no area within the range of Thorne's hairstreak butterfly where the potential threats are significantly concentrated or substantially greater than in other portions of the range. Therefore, we find factors affecting the subspecies are essentially uniform throughout its range, indicating no portion of the butterfly's range warrants further consideration of possible endangered or threatened status under the Act.

We find that the Thorne's hairstreak butterfly is not in danger of extinction now, nor is it likely to become endangered within the foreseeable future, throughout all or a significant portion of its range. Therefore, listing the Thorne's hairstreak butterfly as endangered or threatened under the Act is not warranted at this time.

We request that you submit any new information concerning the status of, or threats to, the Thorne's hairstreak butterfly to our Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section) whenever it becomes available. New information will help us monitor the Thorne's hairstreak butterfly and encourage management of this subspecies and its habitat. If an emergency situation develops for the Thorne's hairstreak butterfly or any other species, we will act to provide immediate protection.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section).

Authors

The primary authors of this notice are the staff members of the Carlsbad Fish and Wildlife Office.

Authority

The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 10, 2011.

Rowan W. Gould,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2011–4038 Filed 2–22–11; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 76, No. 36

Wednesday, February 23, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Thorne Bay Ranger District; Alaska; Big Thorne Project Environmental Impact Statement

Correction

In notice document 2011–3072 which appears on pages 7807–7809 in the issue of Friday, February 11, 2011, make the following correction: In the **ADDRESSES** section, on page 7808, in the first column, in the sixth line, correct the e-mail address to read as set forth below:

comments-alaska-tongass-thorne-bay@fs.fed.us.

[FR Doc. C1–2011–3072 Filed 2–22–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

President's Export Council; Subcommittee on Export Administration; Notice of Open Meeting

The President's Export Council Subcommittee on Export Administration (PECSEA) will meet on March 10, 2011, 1 p.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4830, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The PECSEA provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

Agenda

1. Welcome by Under Secretary of Commerce for Industry and Security.
2. Opening remarks by the Chairman.
3. Presentation of papers or comments by the public.
4. Export Control Reform Update.
5. Administrative issues.

The open session will be accessible via teleconference to 20 participants on a first come, first served basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov* no later than March 3, 2011.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the PECSEA. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to PECSEA members, the PECSEA suggests that public presentation materials or comments be forwarded before the meeting to Ms. Yvette Springer at *Yspringer@bis.doc.gov.*

For more information, contact Yvette Springer on 202–482–2813.

Dated: February 15, 2011.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2011–3918 Filed 2–22–11; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Emerging Technology and Research Advisory Committee; Notice of Partially Closed Meeting

The Emerging Technology and Research Advisory Committee (ETRAC) will meet on March 9 and 10, 2011, 8:30 a.m., Room 3884, at the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on emerging technology and research activities, including those related to deemed exports.

Agenda

Wednesday, March 9

Open Session

1. Welcome and Introductions.
2. Update on Regulatory Modernization.
3. Discussion of technical definitions.
4. Assessment of BIS technical capabilities and resources.
5. Review of methodologies for identifying emerging technologies.
6. Deliberations on suitable methodologies for BIS.

Thursday, March 10

Open Session

1. Deliberations on suitable methodologies for BIS—continued.

Closed Session

Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open sessions will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov* no later than, March 2, 2011.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 9, 2011, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the portion of the meeting dealing with matters which would be likely to frustrate significantly implementation of a proposed agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)1 and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: February 17, 2011.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2011–4027 Filed 2–22–11; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 110207100–1092–02]

Reporting for Calendar Year 2010 on Offsets Agreements Related to Sales of Defense Articles or Defense Services to Foreign Countries or Foreign Firms

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Notice; annual reporting requirements.

SUMMARY: This notice is to remind the public that U.S. firms are required to report annually to the Department of Commerce (Commerce) on contracts for the sale of defense articles or defense services to foreign countries or foreign firms that are subject to offsets agreements exceeding $5,000,000 in value. U.S. firms are also required to report annually to Commerce on offsets transactions completed in performance of existing offsets commitments for which offsets credit of $250,000 or more has been claimed from the foreign representative. This year, such reports must include relevant information from calendar year 2010 and must be submitted to Commerce no later than June 15, 2011.

ADDRESSES: Reports should be addressed to "Offsets Program Manager, U.S. Department of Commerce, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, Room 3878, Washington, DC 20230."

FOR FURTHER INFORMATION CONTACT: Ronald DeMarines, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, U.S. Department of Commerce, telephone: 202–482–3755; fax: 202–482–5650; e-mail: *rdemarin@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

In 2009, the Congress reauthorized the Defense Production Act of 1950 (DPA), and added a new section 723 to that Act, which replaced prior section 309 and addresses offsets in defense trade (*See* 50 U.S.C. app. 2172). Offsets are compensation practices required as a condition of purchase in either government-to-government or commercial sales of defense articles and/or defense services, as defined by the Arms Export Control Act and the International Traffic in Arms Regulations. For example, a company that is selling a fleet of military aircraft to a foreign government may agree to offset the cost of the aircraft by providing training assistance to plant managers in the purchasing country. Although this distorts the true price of the aircraft, the foreign government may require this sort of extra compensation as a condition of awarding the contract to purchase the aircraft.

Section 723(a)(1) of the DPA requires the President to submit an annual report to the Congress on the impact of offsets on the U.S. defense industrial base. Section 723 directs the Secretary of Commerce (Secretary) to function as the President's executive agent for carrying out the responsibilities set forth in that section and authorizes the Secretary to develop and administer the regulations necessary to collect offsets data from U.S. defense exporters.

The authorities of the Secretary regarding offsets have been delegated to the Under Secretary of Commerce for Industry and Security. The regulations associated with offsets reporting are set forth in part 701 of title 15 of the Code of Federal Regulations.

As described in those regulations, U.S. firms are required to report on contracts for the sale of defense articles or defense services to foreign countries or foreign firms that are subject to offsets agreements exceeding $5,000,000 in value. U.S. firms are also required to report annually on offsets transactions completed in performance of existing offsets commitments for which offsets credit of $250,000 or more has been claimed from the foreign representative.

Commerce's annual report to Congress includes an aggregated summary of the data reported by industry in accordance with the offsets regulation and the DPA. As provided by section 723(c) of the DPA, BIS will not publicly disclose the information it receives through offsets reporting unless the firm furnishing the information specifically authorizes public disclosure. The information collected is sorted and organized into an aggregate report of national offsets data, and therefore does not identify company-specific information.

In order to enable BIS to prepare the next annual offset report reflecting calendar year 2010 data, U.S. firms must submit required information on offsets agreements and offsets transactions from calendar year 2010 to BIS no later than June 15, 2011.

Dated: February 15, 2011.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2011–3916 Filed 2–22–11; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review.

SUMMARY: On February 11, 2011, ThyssenKrupp Mexinox S.A. de C.V. and Mexinox USA, Inc. (collectively "Mexinox") filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel Review was requested of the final determination of the U.S. Department of Commerce's International Trade Administration regarding Stainless Steel Sheet and Strip in Coils from Mexico. This determination was published in the **Federal Register** (76 FR 2332), on January 13, 2011. The NAFTA Secretariat has assigned Case Number USA–MEX–2011–1904–01 to this request.

FOR FURTHER INFORMATION CONTACT: Valerie Dees, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, NW., Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free Trade Agreement ("Agreement") established a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada, and the Government of Mexico established *Rules of Procedure for Article 1904*

Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on February 11, 2011, requesting a panel review of the determination and order described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is March 14, 2011);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is March 28, 2011); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in panel review and the procedural and substantive defenses raised in the panel review.

Dated: February 16, 2011.

Valerie Dees,

United States Secretary, NAFTA Secretariat.

[FR Doc. 2011–3941 Filed 2–22–11; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Economic Surveys of American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI) Small Boat-Based Fisheries

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 25, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Minling Pan, National Marine Fisheries Service, (808) 983–5347 or *Minling.Pan@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) proposes to collect information about fishing expenses in the American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI) boat-based reef fish, bottomfish, and pelagics fisheries with which to conduct economic analyses that will improve fishery management in those fisheries; satisfy NMFS' legal mandates under Executive Order 12866, the Magnuson-Steven Fishery Conservation and Management Act (U.S.C. 1801 et seq.), the Regulatory Flexibility Act, the Endangered Species Act, and the National Environmental Policy Act; and quantify achievement of the performances measures in the NMFS Strategic Operating Plans. An example of these performance measures: the economic data collected will allow quantitative assessment of the fisheries sector's social and economic contribution, linkages and impacts of the fisheries sector to the overall economy through Input-output (I–O) models analyses. Results from I–O analyses will not only provide indicators of social-economic benefits of the marine ecosystem, a performance measure in the NMFS Strategic Operating Plans, but also be used to assess how fishermen and economy will be impacted by and respond to regulations likely to be considered by fishery managers. These data will be collected in conjunction with catch and effort data already being collected in this fishery as part of its creel survey program.[1] Participation in the economic data collection will be voluntary.

[1] The Creel Survey Program is one of the major data collection systems to monitor fisheries resources in these three geographic areas. The survey monitors the islands' fishing activities and interviews returning fishermen at the most active launching ramps/docks during selected time periods on the islands.

II. Method of Collection

The economic surveys will be conducted via in-person interviews when a fishing trip is completed. Captains of selected vessels by the creel survey will also be surveyed on the information about trip costs, input usage, and input prices.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission (new information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,200.

Estimated Time per Response: 10 minutes per trip survey.

Estimated Total Annual Burden Hours: 200.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 16, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–3942 Filed 2–22–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA240

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council's Scallop Plan Team will meet March 7–8, 2011 in the Council Office at the Old Federal Building.

DATES: The meeting will be held March 7, 2011, from 10:30 a.m. to 5 p.m. and March 8, 2011, from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Old Federal Building, 605 W. 4th Avenue, #205, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Diana Stram, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION:

Agenda: The Scallop Plan Team will review stock status of statewide scallop stocks, compile Scallop SAFE report and recommend catch specifications, and review and comment on EFH amendments for scallop.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: February 17, 2011.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–3979 Filed 2–22–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA238

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of SEDAR 25 South Atlantic data webinar for black sea bass and golden tilefish.

SUMMARY: The SEDAR 25 assessment of the South Atlantic black sea bass (*Centropristis striata*) and golden tilefish (*Lopholatilus chamaeleonticeps*) will consist of a series of workshops and webinars: This notice is for a webinar associated with the Data portion of the SEDAR process. *See* **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 25 data webinar will be held March 24, 2011 beginning at 9 a.m. and is expected to last approximately 3 hours. The established time may be adjusted as necessary to accommodate the timely completion of discussion relevant to the data workshop process. Such adjustments may result in the meeting being extended from, or completed prior to the time established by this notice.

ADDRESSES: The meetings will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Kari Fenske at SEDAR (*See* **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information.

FOR FURTHER INFORMATION CONTACT: Kari Fenske, SEDAR Coordinator, 4055 Faber Place, Suite 201, North Charleston, SC 29405; *telephone:* (843) 571–4366; *e-mail: kari.fenske@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop, (2) Assessment Process utilizing webinars and workshops (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting Panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

SEDAR 25 Data webinar: Participants will present summary data, and discuss data needs and treatments.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this webinar. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (*see* **ADDRESSES**) at least 10 business days prior to the meeting.

Dated: February 17, 2011.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–3968 Filed 2–22–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA241

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Observer Advisory Committee (OAC) will meet at the Council office in the Old Federal Building.

DATES: The meeting will be held on March 22, 2011, from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Old Federal Building, 605 W. 4th Avenue, #205 Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Nicole Kimball, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: This meeting is to review progress on the observer restructuring regulatory package, as well as discuss development of a potential electronic monitoring system design for less than 60 foot vessels that are included under the observer restructuring action. Electronic monitoring may be a potential alternative to an observer for some small vessels that will be subject to sampling and monitoring requirements under the new observer restructuring regulations. Listen-only teleconference line will be provided: (907) 271–2896. The agenda is subject to change, and the latest version will be posted at *http://www.alaskafisheries.noaa.gov/npfmc/*

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: February 17, 2011.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–3980 Filed 2–22–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Reserve Forces Policy Board (RFPB)

AGENCY: Office of the Secretary of Defense Reserve Forces Policy Board, DoD.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces the following Federal advisory committee meeting:

Name of Committee: Reserve Forces Policy Board (RFPB).

Date: Tuesday and Wednesday, March 22nd and 23rd, 2011.

Time: Tuesday, March 22nd, 2011 (7:50 a.m.–3 p.m.); and Wednesday, March 23rd, 2011 (7:50 a.m.–12:30 p.m.)

Location: Meeting address is (03/22/11) Fort Myer Officer's Club, Arlington, VA 22211; (03/23/11) Pentagon, Conference Room 3E863, Arlington, VA. Mailing address is Reserve Forces Policy Board, 7300 Defense Pentagon, Washington, DC 20301–7300.

Purpose of the Meeting: An open meeting of the Reserve Forces Policy Board.

Agenda: Total Force Readiness, Care for Our People, and Culture of Relevance, Effectiveness, and Efficiency.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. To request a seat, contact the Designated Federal Officer not later than 02/28/11 at (703) 697–4486, or by e-mail, *RFPB@osd.mil.*

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the Reserve Forces Policy Board at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Reserve Forces Policy Board's Designated Federal Officer. The Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

Written statements that do not pertain to a scheduled meeting of the Reserve Forces Policy Board may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all the committee members.

For Further Information Contact: Lt Col Julie A. Small, Designated Federal Officer, (703) 697–4486 (Voice), (703) 693–5371 (Facsimile), *RFPB@osd.mil.* Mailing address is Reserve Forces Policy Board, 7300 Defense Pentagon, Washington, DC 20301–7300. Website: *http://ra.defense.gov/rfpb/.*

Dated: February 15, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–3973 Filed 2–22–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2011–OS–0023]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to Delete a System of Records.

SUMMARY: The Office of the Secretary of Defense is deleting a system of records notice from its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on March 25, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, Mailroom 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are

received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Cindy Allard at (703) 588–6830, or Privacy Act Officer, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The Office of the Secretary of Defense proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 15, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION:

DWHS P14

Blood Donor Files (February 22, 1993, 58 FR 10227).

REASON:

Washington Headquarters Services (WHS) ceased sponsoring blood drives in 2004. Records covered under this system of records notice have been destroyed in accordance with NARA authorized records schedule (destroy when three years old). WHS no longer collects or maintains any records pertaining to blood donor files.

[FR Doc. 2011–3970 Filed 2–22–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2011–OS–0024]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to Delete three Systems of Records.

SUMMARY: The Office of the Secretary of Defense is deleting three systems of record notices from its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on March 25, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 1160. Defense Pentagon, Mailroom 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Cindy Allard at (703) 588–6830, or the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The Office of the Secretary of Defense proposes to delete three systems of records notices from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 15, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION:

JS007MPD

Joint Manpower Automation System Files, (February 22, 1993, 58 FR 10557).

REASON:

The Joint Staff Military Personnel Files are covered by existing system of records notices issued by each of the Military Services and civilian personnel records are covered by a government-wide system notice and this system notice is duplicative. The applicable systems of records notices are:

Army: A0600–8–104b AHRC, Official Military Personnel Records (August 8, 2004, 69 FR 51271).

Navy: N0070–3, Navy Military Personnel Records System (April 15, 2010, 75 FR 19627).

Marine Corps: M01070–6, Marine Corps Official Military Personnel Files (March 17, 2008, 73 FR 14234).

Air Force: F036 AF PC C, Military Personnel Records System (October 13, 2000, 65 FR 60916).

DoD civilian records are covered under OPM/Govt-1, General Personnel Records (June 19, 2006, 71 FR 35356).

DELETION:

JS009ATHD

Anti-Terrorism Awareness Training Records Files, (February 22, 1993, 58 FR 10557).

REASON:

The Joint Staff does not collect or maintain training data. DoD Instruction 2000.16, DoD Antiterrorism Standards, establishes that unit commanders and directors are responsible for maintaining data on training completion.

DELETION:

JS003SMB

Manpower, Personnel and Security System (MPSS) Files (February 22, 1993, 58 FR 10557).

REASON:

The Joint Staff Manpower, Personnel and Security System files are covered by existing system of records notices issued by each of the Military Services and this system notice is duplicative. These systems of records notices are:

Army: A0600–8–104b AHRC, Official Military Personnel Records (August 8, 2004, 69 FR 51271).

Navy: N0070–3, Navy Military Personnel Records System (April 15, 2010, 75 FR 19627).

Marine Corps: M01070–6, Marine Corps Official Military Personnel Files (March 17, 2008, 73 FR 14234).

Air Force: F036 AF PC C, Military Personnel Records System (October 13, 2000, 65 FR 60916).

[FR Doc. 2011–3971 Filed 2–22–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2011–OS–0020]

Privacy Act of 1974; System of Records

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Notice to Delete a System of Records.

SUMMARY: The Defense Intelligence Agency proposes to delete a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on March 25, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Mailroom 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at (202) 231–1193, or DIA Privacy Act Coordinator, Records Management Section, 200 MacDill Blvd., Washington, DC 20340.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The Defense Intelligence Agency systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Defense Intelligence Agency proposes to delete a system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 15, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION

LDIA 05–0002

SYSTEM NAME:

Retiree Database (February 27, 2007, 72 FR 8699).

REASON:

The records contained in this system of records have been incorporated into LDIA 10–0002, Foreign Intelligence and Counterintelligence Operation Records.

[FR Doc. 2011–3975 Filed 2–22–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2011–0005]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to Alter a System of Records.

SUMMARY: The Department of the Air Force is proposing to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on March 25, 2011 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Mailroom 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Shedrick, 703–696–6488, or Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information Officer, ATTN: SAF/XCPPI, 1800 Air Force Pentagon, Washington, DC 20330–1800.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The proposed systems reports, as required by 5 United States Code 552a(r) of the Privacy Act, were submitted on February 9, 2011 to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget pursuant to paragraph 4c of Appendix I to Office of Management and Budget Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996, (February 20, 1996, 61 **Federal Register** 6427).

Dated: February 10, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AF PC G

SYSTEM NAME:

Selective Reenlistment Consideration (June 11, 1997, 62 FR 31793).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Headquarters Air Force Personnel Center, 550 C Street West, Randolph Air Force Base, TX 78150–7412 and at Military Personnel Sections at Air Force Installations. Official mailing addresses are published as an appendix to the Air Force's compilation of system of records."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Initial enlistees within 15 months of original expiration term of service; second term career Airmen within 13 months of expiration term of service being considered for continued service in the Air Force."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Individual's name, Social Security Number (SSN), date of birth, grade, home of record and documentation of the selective reenlistment consideration process."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. Chapter 833, Enlistments; Air Force Instruction 36–2606, Reenlistment in the United States Air Force; and E.O. 9397 (SSN), as amended."

* * * * *

STORAGE:

Delete entry and replace with "Maintained on electronic storage media and/or in file binders/cabinets."

RETRIEVABILITY:

Delete entry and replace with "Retrieved by name and/or last four digits of SSN."

SAFEGUARDS:

Delete entry and replace with "Records are accessed by the custodian of the record system and by individuals responsible for servicing the record system in performance of their official duties and who are properly screened and cleared for need-to-know. Records are stored electronically and/or in locked cabinets or rooms. Electronic media is accessed by a Common Access Card (CAC)."

RETENTION AND DISPOSAL:

Delete entry and replace with "Retained for one year after decision made to select individual for consideration of continued service in the Air Force. Paper records are destroyed by tearing into pieces, shredding, pulping, macerating, or burning and electronic records are destroyed by magnetic erasing."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Headquarters Air Force Personnel Center, Directorate of Personnel Services, Enlisted Skills Management Branch (HQ AFPC/DPSOA), 550 C Street West, Suite 10, Randolph Air Force Base, TX 78150–4712."

NOTIFICATION PROCEDURES:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the servicing military personnel section or visit the servicing military personnel section. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

For verification purposes, individual should provide their full name, SSN, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address requests to the servicing military personnel section or visit the servicing military personnel section. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

For verification purposes, individual should provide their full name, SSN, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'."

CONTESTING RECORD PROCEDURES:

Deleted entry and replace with "The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in 32 CFR part 806b, Air Force Instruction 33–332, Air Force Privacy Program and may be obtained from the system manager."

* * * * *

F036 AF PC G

SYSTEM NAME:

Selective Reenlistment Consideration.

SYSTEM LOCATION:

Headquarters Air Force Personnel Center, 550 C Street West, Randolph Air Force Base, TX 78150–4712 and at Military Personnel Sections at Air Force Installations. Official mailing addresses are published as an appendix to the Air Force's compilation of system of records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Initial enlistees within 15 months of original expiration term of service; second term career Airmen within 13 months of expiration term of service being considered for continued service in the Air Force.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number (SSN), date of birth, grade, home of record and documentation of the selective reenlistment consideration process.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Chapter 833, Enlistments; Air Force Instruction 36–2606, Reenlistment in the United States Air Force; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

Used by member's immediate supervisor, member's immediate commander, unit career advisor, and base career advisor to determine member's reenlistment eligibility.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may be specifically disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on electronic storage media and/or in file binders/cabinets.

RETRIEVABILITY:

Retrieved by name and or last four digits of SSN.

SAFEGUARDS:

Records are accessed by the custodian of the record system and by individuals responsible for servicing the record system in performance of their official duties and who are properly screened and cleared for need-to-know. Records are stored electronically and/or in locked cabinets or rooms. Electronic media is accessed by a Common Access Card (CAC).

RETENTION AND DISPOSAL:

Retained for one year after decision made to select individual for consideration of continued service in the Air Force. Paper records are destroyed by tearing into pieces, shredding, pulping, macerating, or burning and electronic records are destroyed by magnetic erasing.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters Air Force Personnel Center, Directorate of Personnel Services, Enlisted Skills Management Branch (HQ AFPC/DPSOA), 550 C Street West, Suite 10, Randolph Air Force Base, TX 78150–4712.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the servicing military personnel section or visit the servicing military personnel section. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

For verification purposes, individual should provide their full name, SSN, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the servicing military personnel section or visit the servicing military personnel section. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

For verification purposes, individual should provide their full name, SSN, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in 32 CFR part 806b, Air Force Instruction 33–332, Air Force Privacy Program and may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Entries are made by the supervisor and commander, and acknowledged by the member.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–3972 Filed 2–22–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of the Draft Supplemental Environmental Impact Statement for the Disposal and Reuse of Hunters Point Naval Shipyard, San Francisco, CA, and To Announce Public Hearings

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy (Navy) has prepared and filed the Draft Supplemental Environmental Impact Statement (SEIS) evaluating the potential environmental consequences associated with the disposal and reuse of Hunters Point Naval Shipyard (HPS), San Francisco, California. The Navy is required to dispose of HPS per Public Law 101–510, the Defense Base Closure and Realignment Act of 1990, as amended. A public hearing will be held to provide information and receive oral and written comments on the Draft SEIS. Federal, State, and local agencies and interested individuals are invited to be present or represented at the hearing.

Dates and Addresses: One public hearing will be held. The hearing will be preceded by an open information session to allow interested individuals to review information presented in the Draft SEIS. Navy representatives will be available during the information session to provide clarification as necessary related to the Draft SEIS. The public hearing is scheduled as follows: Tuesday, March 15, 2011, from 6:30 p.m. to 8:30 p.m. at the Southeast Community Facility Community Center, Alex L. Pitcher, Jr. Community Room, 1800 Oakdale Avenue, San Francisco, California 94124. The open information session will be held on the same date and at the same location, from 5:30 p.m. to 6:30 p.m.

FOR FURTHER INFORMATION CONTACT: Director, BRAC PMO West, Attn: Mr. Ronald Bochenek, 1455 Frazee Road, Suite 900, San Diego, CA 92108–4310, telephone 619–532–0906, fax 619–532–9858, e-mail: *ronald.bochenek.ctr@navy.mil*.

SUPPLEMENTARY INFORMATION: The Navy, as lead agency, has prepared and filed the Draft SEIS for the Disposal and Reuse of Hunters Point Shipyard, San Francisco, California in accordance with the requirements of the NEPA of 1969 (42 U.S.C. 4321–4345) and its implementing regulations (40 CFR parts 1500–1508). A Notice of Intent (NOI) for the SEIS was published in the **Federal Register** on September 5, 2008 (**Federal Register**/Vol. 73, No. 173 pgs 51797 & 51798/Friday, September 5, 2008/Notices). The purpose of the proposed action is the disposal of HPS from Federal ownership (864 acres [421 acres dry land & 443 acres submerged]) and its subsequent reuse by the County and City of San Francisco in a manner consistent with the Hunters Point Naval

Shipyard Redevelopment Plan as developed by the San Francisco Redevelopment Agency (SFRA) in July 1997, and amended in August 2010. The Navy is required to close HPS in accordance with Public Law 101–510, the Defense Base Closure and Realignment Act of 1990, as amended. In accordance with NEPA, before disposing of any real property, the Navy must analyze the environmental effects of the disposal of the HPS property. The Draft SEIS has identified and considered six reuse alternatives for HPS and a no action alternative. Navy disposal is assumed as part of each reuse alternative. The no action alternative assumes retention of the HPS property by the Government in a "caretaker status" and no reuse or redevelopment.

Alternative 1, Stadium Plan Alternative, would redevelop HPS with a wide range of uses including a mixed-use community with 2,650 residential units, retail (125,000 square feet (sq ft)), research and development (R&D) (2.5 million sq ft), community services (50,000 sq ft), and parks and recreational open space (232 acres). A major component would include a new 69,000-seat football stadium. This alternative would also include a 300-slip marina, improvements to stabilize the shoreline, and a new bridge over Yosemite Slough. New infrastructure would serve the development as necessary.

Alternative 1A (the "Stadium Plan/No Bridge Alternative") includes the disposal of HPS by the Navy and its reuse with the same level, land use types, and density of development as Alternative 1, except that the Yosemite Slough bridge would not be constructed.

Alternative 2 (the "Non-Stadium Plan/Additional R&D Alternative") includes many of the same components as Alternative 1 including 2,650 residential units, retail (125,000 sq ft), community services (50,000 sq ft), and parks and recreational open space (222 acres), a 300-slip marina, improvements to stabilize the shoreline, and a new bridge over Yosemite Slough. Under this alternative, a new football stadium would not be constructed. Instead, an additional 2.5 million sq ft, for a total of 5 million sq ft, of R&D space would be developed.

Alternative 2A (the "Non-Stadium Plan/Housing and R&D Alternative") includes a mix of uses including 4,275 residential units, retail (125,000 sq ft), R&D (3 million sq ft), community services (50,000 sq ft), and parks and recreational open space (222 acres). This alternative would also include a 300-slip marina, improvements to stabilize the shoreline, and a new bridge over Yosemite Slough. No new football stadium would be constructed.

Alternative 3 (the "Non-Stadium Plan/Additional Housing Alternative") does not include a new stadium, but is comprised of a mix of land uses including 4,000 residential units, retail (125,000 sq ft), R&D (2.5 million sq ft), community services (50,000 sq ft), and parks and recreational open space (245 acres). The alternative also includes a 300-slip marina, improvements to stabilize the shoreline, and a new bridge over Yosemite Slough.

Alternative 4 ("the Non-Stadium Plan/Reduced Development Alternative") includes a reduced density of development. Development proposed under this alternative includes 1,855 residential units, retail (87,500 sq ft), R&D (1.75 million sq ft), community services (50,000 sq ft), and parks and recreational open space (245 acres). This alternative does not include a new stadium, a bridge over Yosemite Slough, a marina, or shoreline stabilization.

The "No Action Alternative" is required by NEPA and evaluates the impacts at HPS in the event that the property is not disposed. Under this alternative the property would be retained by the Navy in caretaker status. Existing leases would continue until they expire or are terminated, and no new leases would be entered into. No reuse or redevelopment would occur under this alternative.

For each alternative, the Draft SEIS addresses the potential direct, indirect, short-term, and long-term impacts on the human and natural environments, including the following resource areas: Transportation, traffic, and circulation; air quality and greenhouse gases; noise; land use and recreation; visual resources and aesthetics; socioeconomics; hazards and hazardous substances; geology and soils; water resources; utilities; public services; cultural resources; biological resources; and environmental justice. The analysis also includes an analysis of cumulative impacts from other reasonably foreseeable Federal, State, or local activities at and around HPS.

The Navy conducted a public scoping period from September 5 to October 17, 2008, and held a public scoping meeting on September 23, 2008, to identify community concerns and local issues that should be addressed in the SEIS. Federal, State, and local agencies and interested parties provided oral and written comments to the Navy and identified specific issues or topics of environmental concern that should be addressed in the SEIS. In addition, the Navy facilitated additional community outreach activities to solicit comments and concerns from interested community groups in 2009. The Navy considered the scoping and outreach comments in determining the scope of the SEIS.

Federal, State, and local agencies, as well as interested parties, are invited and encouraged to review and comment on the Draft SEIS. Comments can be made in the following ways: (1) Oral statements or written comments at the scheduled public hearing; or (2) written comments mailed to the BRAC PMO address in this notice; or (3) written comments faxed to the BRAC PMO fax number in this notice; or (4) comments submitted via e-mail using the BRAC PMO e-mail address in this notice.

The Draft SEIS has been distributed to various Federal, State, local agencies, and Native American tribes, as well as other interested individuals and organizations. In addition, copies of the Draft SEIS have been distributed to the following libraries and publicly accessible facilities for public review:

1. San Francisco Main Library, 100 Larkin Street, San Francisco, CA 94102.
2. San Francisco State University Library, 1360 Holloway Avenue, San Francisco, CA 94132.
3. Hastings Law Library, UC Hastings College of the Law, 200 McAllister Street, 4th Floor, San Francisco, CA 94102.
4. Jonsson Library of Government Documents, Cecil H. Green Library, Bing Wing, Stanford, CA 94305–6004.
5. Institute of Governmental Studies Library, UC Berkeley, 109 Moses Hall, #2370, Berkeley, CA 94720.
6. San Francisco Redevelopment Agency (By Appointment), One South Van Ness Avenue, Fifth Floor, San Francisco, CA 94103.
7. City Planning Department (By Appointment), 1650 Mission Street, Fourth Floor, San Francisco, CA 94103.

An electronic copy of the Draft SEIS is also available for public viewing at *http://www.bracpmo.navy.mil*.

Equal weight will be given to comments received at the scheduled public hearing and those directly forwarded to BRAC PMO. In the interest of available time, and to ensure all who wish to give oral statements at the public hearing the opportunity to do so, each speaker's comments will be limited to three minutes. If a longer statement is to be presented, it should be summarized at the public hearing and the full text submitted in writing either at the hearing or mailed or e-mailed to the below address. To ensure the accuracy of the record, all statements presented orally at the public hearings should be submitted in writing.

Comments can be submitted in writing or e-mailed to: Director, BRAC PMO West, Attn. Mr. Ronald Bochenek, 1455 Frazee Road, Suite 900, San Diego, CA 92108–4310, telephone 619–532–0906, fax 619–532–9858, e-mail: *ronald.bochenek.ctr@navy.mil*.

To be considered, all comments must be received by Tuesday, April 12, 2011. Such comments will become part of the public record and will be responded to in the Final SEIS.

Requests for special assistance, sign language interpretation for the hearing impaired, language interpreters, or other auxiliary aids for the scheduled public hearing must be sent by mail or e-mail to BRAC PMO West, Attn: Mr. Ronald Bochenek, 1455 Frazee Road, Suite 900, San Diego, CA 92108–4310, e-mail: *ronald.bochenek.ctr@navy.mil*.

Dated: February 15, 2011.

D.J. Werner,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2011–3966 Filed 2–22–11; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Predominantly Black Institutions Competitive Grant Program; Office of Postsecondary Education; Overview Information; Predominantly Black Institutions Competitive Grant Program; Notice Inviting Applications for New Awards Using Fiscal Year (FY) 2010 Funds

Catalog of Federal Domestic Assistance (CFDA) Number: 84.382A.

Dates: Applications Available: February 23, 2011.

Deadline for Transmittal of Applications: April 25, 2011.

Deadline for Intergovernmental Review: June 23, 2011.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Predominantly Black Institutions (PBI) Program is to strengthen PBIs to carry out programs in the following areas: science, technology, engineering, or mathematics (STEM); health education; internationalization or globalization; teacher preparation; or improving educational outcomes of African-American males.

Priorities: These priorities are from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486).

Competitive Preference Priorities: For FY 2011, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award an additional two and a half points to an application that meets one of the priorities, or an additional five points to an application that meets both of these priorities.

These priorities are:

1. Increasing Postsecondary Success

Increasing the number and proportion of high-need students (as defined in this notice) who persist in and complete college or other postsecondary education and training; and

2. Enabling More Data-Based Decision-Making

Projects that are designed to collect (or obtain), analyze, and use high-quality and timely data, including data on program participant outcomes, in accordance with privacy requirements (as defined in this notice), in the following priority area:

Improving postsecondary student outcomes relating to enrollment, persistence, and completion and leading to career success.

Definitions: These definitions are from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486).

High-need children and high-need students means children and students at risk of educational failure, such as children and students who are living in poverty, who are English learners, who are far below grade level or who are not on track to becoming college- or career-ready by graduation, who have left school or college before receiving, respectively, a regular high school diploma or a college degree or certificate, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who are pregnant or parenting teenagers, who have been incarcerated, who are new immigrants, who are migrant, or who have disabilities.

Privacy requirements means the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and its implementing regulations in 34 CFR part 99, the Privacy Act, 5 U.S.C. 552a, as well as all applicable Federal, State and local requirements regarding privacy.

Program Authority: Title III, part F, section 371 of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1067q).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486).

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $15,000,000.

Note: Funds appropriated for this program for FY 2010 remain available for obligation in FY 2011 pursuant to 20 U.S.C. 1067q(b)(1)(B)).

Estimated Average Size of Awards: $600,000.

Estimated Number of Awards: 25.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* To be eligible to apply, an institution of higher education (IHE) must have submitted the "Application for Designation as an Eligible Institution" and must have received FY 2010 designation as an eligible institution for programs under title III and title V of the HEA. The original deadline for applying for designation as an eligible institution was January 6, 2010. (74 FR 64059–64062). However, the FY 2010 eligibility process was reopened with an application deadline of September 13, 2010 for PBIs (and certain other institutions) to allow maximum participation of potentially eligible applicants (74 FR 49484). The regulations explaining the standards for designation can be found in 34 CFR 607.2 through 607.5. In addition, an applicant must—

(a) Have an enrollment of needy students, as defined by section 371(c)(3) of the HEA (20 U.S.C. 1067q(c)(3)). The term *enrollment of needy students* means the enrollment at the eligible IHE with respect to which not less than 50 percent of the undergraduate students enrolled in an academic program leading to a degree—

(i) In the second fiscal year preceding the fiscal year for which the determination is made, were Federal Pell Grant recipients for such year;

(ii) Come from families that receive benefits under a means-tested Federal benefit program (as defined in section 371(c)(5) of the HEA, 20 U.S.C. 1067q(c)(5));

(iii) Attended a public or nonprofit private secondary school that—

(A) Is in the school district of a local educational agency that was eligible for assistance under part A of title I of the

Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 6301 *et seq.*), for any year during which the student attended such secondary school; and

(B) For the purpose of this paragraph and for that year, was determined by the Secretary (pursuant to regulations and after consultation with the State educational agency of the State in which the school is located) to be a school in which the enrollment of children counted under a measure of poverty described in section 1113(a)(5) of the ESEA (20 U.S.C. 6313(a)(5)) exceeds 30 percent of the total enrollment of such school; or

(iv) Are first-generation college students, as that term is defined in section 402A(h) of the HEA (20 U.S.C. 1070a–11(h)), and a majority of such first-generation college students are low-income individuals, as that term is defined in section 402A(h) of the HEA (20 U.S.C. 1070a–11(h));

(b) Have an average educational and general expenditure that is low, per full-time equivalent undergraduate student in comparison with the average educational and general expenditure per full-time equivalent undergraduate student of IHEs that offer similar instruction. The Secretary may waive this requirement, in accordance with section 392(b) of the HEA (20 U.S.C. 1068a(b)), in the same manner as the Secretary applies the waiver requirements to grant applicants under section 312(b)(1)(B) of the HEA (20 U.S.C. 1058(b)(1)(B));

(c) Have an enrollment of undergraduate students—

(i) That is at least 40 percent Black American students;

(ii) That is at least 1,000 undergraduate students;

(iii) Of which not less than 50 percent of the undergraduate students enrolled at the institution are low-income individuals, as that term is defined in section 402A(h) of the HEA (20 U.S.C. 1070a–11(h)), or first generation college students, as that term is defined in section 402A(h) of the HEA (20 U.S.C. 1070a–11(h)); and

(iv) Of which not less than 50 percent of the undergraduate students are enrolled in an educational program leading to a bachelor's or associate's degree that the institution is licensed to award by the State in which the institution is located;

(d) Is legally authorized to provide, and provides, within the State an educational program for which the IHE awards a bachelor's degree or, in the case of a junior or community college, an associate's degree;

(e) Is accredited by a nationally recognized accrediting agency or association determined by the Secretary to be a reliable authority as to the quality of training offered, or is, according to such an agency or association, making reasonable progress toward accreditation; and

(f) Is not receiving assistance under part B of title III or part A of Title V of the HEA or an annual authorization of appropriations under the Act of March 2, 1867 (20 U.S.C. 123).

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Bernadette D. Miles, U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006. Telephone: 202–502–7616, or by e-mail: *Bernadette.Miles@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative [Part III] to no more than 40 pages, using the following standards. For purposes of determining compliance with the page limit, each page on which there are words will be counted as one full page except as specifically discussed below.

- A "page" is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides. Page numbers and an identifier may be outside of the 1″ margin.
- Double space (no more than three lines per vertical inch) all text in the application narrative, *except* titles, headings, footnotes, quotations, references, and captions. Charts, tables, figures, and graphs in the application narrative may be singled spaced and will count toward the page limit.
- Use a font that is either 12 point or larger, or no smaller than 10 pitch (characters per inch). However, you may use a 10 point font in charts, tables, figures, and graphs.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. Applications submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet SF 424; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract. The page limit also does not apply to a table of contents. If you include any attachments or appendices not specifically requested, these items will be counted as part of the program narrative (Part III) for purposes of the page limit requirement. You must include your complete response to the selection criteria in the program narrative.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: February 23, 2011.

Deadline for Transmittal of Applications: April 25, 2011.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under *For Further Information Contact* in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: June 23, 2011.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3–Step Registration Guide (*see http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*).

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Predominantly Black Institutions Program, CFDA Number 84.382A, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Predominantly Black Institutions Program at www.Grants.gov. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.382, not 84.382A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must attach any narrative sections of your application as files in a .PDF (Portable Document) format only. If you upload a file type other than a .PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline

date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under *For Further Information Contact* in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Bernadette D. Miles, U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006. FAX: 202–502–7861.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.382A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.382A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.209(a) and 75.210, and are as follows—

Need for the project (20 points);

Quality of the project design (15 points);

Quality of project services (15 points);

Quality of project personnel (10 points);

Adequacy of resources (5 points);

Quality of the management plan (20 points);

Quality of project evaluation (15 points).

Additional information regarding these criteria is in the application package for this competition.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

An additional factor we consider in selecting an application for an award is that applicants must provide, as an attachment to the application, the

documentation the institution relied upon to determine that at least 40 percent of the institution's undergraduate enrollment are Black American students.

Note: The 40 percent requirement applies only to *undergraduate* Black American students and is calculated based upon unduplicated undergraduate enrollment. Instructions for formatting and submitting the verification documentation to e-Application are in the application package for this competition.

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the PBI Program:

a. The percentage change of the number of full-time degree-granting undergraduate students enrolled at PBIs.

b. The percentage of first-time, full-time, degree-seeking undergraduate students at four-year PBIs who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same four-year PBI.

c. The percentage of first-time, full-time, degree-seeking undergraduate students at two-year PBIs who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same two-year PBI.

d. The percentage of first-time, full-time, degree-seeking undergraduate students enrolled at four-year PBIs who graduate within six years of enrollment.

e. The percentage of first-time, full-time, degree-seeking undergraduate students enrolled at two-year PBIs who graduate within three years of enrollment.

f. Efficiency measure: Federal cost per undergraduate degree at PBIs.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made "substantial progress toward meeting the objectives in its approved application." This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Bernadette D. Miles, Institutional Services, U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006. Telephone: 202–502–7616, or by e-mail: *Bernadette.Miles@ed.gov.*

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF), on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: February 17, 2010.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2011–4021 Filed 2–22–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Laboratory. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, March 15, 2011, 8 a.m.–5 p.m.

Opportunities for public participation will be from 10:15 a.m. to 10:30 a.m. and from 2:15 p.m. to 2:30 p.m.

These times are subject to change; please contact the Federal Coordinator (below) for confirmation of times prior to the meeting.

ADDRESSES: Hilton Garden Inn, 700 Lindsey Boulevard, Idaho Falls, Idaho 83402.

FOR FURTHER INFORMATION CONTACT: Robert L. Pence, Federal Coordinator, Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, MS–1203, Idaho Falls, Idaho 83415. Phone (208) 526–6518; Fax (208) 526–8789 or e-mail: *pencerl@id.doe.gov* or visit the Board's Internet home page at: *http://www.inlemcab.org*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Topics (agenda topics may change up to the day of the meeting; please contact Robert L. Pence for the most current agenda):

- Recent Public Involvement
- Progress to Cleanup
- Five-Year Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Review
- Idaho's 2015 Cleanup Vision
- Government Budget Cycle
- American Recovery and Reinvestment Act Idaho Cleanup Project "Buy Back"
- Subsurface Disposal Area Progress
- Interactive Radiation Demonstration Integrated Waste Treatment Unit System Testing

Public Participation: The EM SSAB, Idaho National Laboratory, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Robert L. Pence at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Robert L. Pence at the address or telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Robert L. Pence, Federal Coordinator, at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.inlemcab.org/meetings.html*.

Issued at Washington, DC, on February 17, 2011.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–3985 Filed 2–22–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–1772–000.

Applicants: MoGas Pipeline LLC.

Description: MoGas Pipeline LLC submits tariff filing per 154.403(d)(2): Annual Fuel Adjustment to be effective 3/1/2011.

Filed Date: 02/11/2011.

Accession Number: 20110211–5120.

Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: RP11–1773–000.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits tariff filing per 154.204: 20110214 Flint Hills Non-conforming to be effective 3/17/2011.

Filed Date: 02/14/2011.

Accession Number: 20110214–5062.

Comment Date: 5 p.m. Eastern Time on Monday, February 28, 2011.

Docket Numbers: RP11–1774–000.

Applicants: Kern River Gas Transmission Company.

Description: Kern River Gas Transmission Company submits request for limited waiver of tariff general terms and conditions sections 10.6 and 12.7.

Filed Date: 02/14/2011.

Accession Number: 20110214–5064.

Comment Date: 5 p.m. Eastern Time on Monday, February 28, 2011.

Docket Numbers: RP11–1775–000.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC submits tariff filing per 154.204: Contract Extension to be effective 3/16/2011.

Filed Date: 02/14/2011.

Accession Number: 20110214–5111.

Comment Date: 5 p.m. Eastern Time on Monday, February 28, 2011.

Docket Numbers: RP11–1776–000.

Applicants: Nautilus Pipeline Company, L.L.C.

Description: Nautilus Pipeline Company, L.L.C. submits tariff filing per 154.204: Non-Conforming Agreements to be effective 12/1/2010.

Filed Date: 02/14/2011.

Accession Number: 20110214–5163.

Comment Date: 5 p.m. Eastern Time on Monday, February 28, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 15, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–4000 Filed 2–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice Of Filings No 1

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–1761–000.

Applicants: PostRock KPC Pipeline, LLC.

Description: PostRock KPC Pipeline, LLC submits tariff filing per 154.313: Lease Cost Adjustment to be effective 1/1/2011.

Filed Date: 02/04/2011.

Accession Number: 20110204–5021.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 16, 2011.

Docket Numbers: RP11–1762–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Iroquois Gas Transmission System, L.P. submits tariff filing per 154.204: 02/04/11 Negotiated Rates—BG Energy Merchants, LLC to be effective 2/5/2011.

Filed Date: 02/04/2011.

Accession Number: 20110204–5023.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 16, 2011.

Docket Numbers: RP11–1763–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Add Bistineau Storage Balancing SLN to FSS–B PF Service Agreement to be effective 2/8/2011.

Filed Date: 02/08/2011.

Accession Number: 20110208–5085.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: RP11–1764–000.

Applicants: Trailblazer Pipeline Company LLC.

Description: Trailblazer Pipeline Company LLC submits tariff filing per 154.203: Order No. 714 Compliance Filing—Baseline Tariff to be effective 3/10/2011.

Filed Date: 02/08/2011.

Accession Number: 20110208–5153.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Number: CP11–77–000.

Applicants: PostRock KPC Pipeline, LLC.

Description: Abbreviated application to partially abandon leased capacity of PostRock KPC Pipeline, LLC.

Filed Date: 02/04/2011.

Accession Number: 20110204–5022.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 16, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 09, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–4001 Filed 2–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–1765–000.

Applicants: Leaf River Energy Center LLC.

Description: Leaf River Energy Center LLC submits tariff filing per 154.203: Filing of Initial FERC Gas Tariff in Compliance with Docket No CP08–8–000 to be effective 3/11/2011.

Filed Date: 02/09/2011.

Accession Number: 20110209–5133.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: RP11–1766–000.

Applicants: Colorado Interstate Gas Company.

Description: Colorado Interstate Gas Company submits tariff filing per 154.204: Gas Quality Clean-up to be effective 3/14/2011.

Filed Date: 02/09/2011.

Accession Number: 20110209–5182.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: RP11–1767–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Iroquois Gas Transmission System, L.P. submits tariff filing per 154.204: 02/10/11 Negotiated Rates—JP Morgan Ventures Energy Corporation to be effective 2/10/2011.

Filed Date: 02/10/2011.

Accession Number: 20110210–5065.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: RP11–1768–000.

Applicants: Wyoming Interstate Company, L.L.C.

Description: Wyoming Interstate Company, L.L.C. submits tariff filing per 154.204: Negotiated Rate Update (BP) to be effective 3/14/2011.

Filed Date: 02/10/2011.

Accession Number: 20110210–5123.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: RP11–1769–000.

Applicants: Northern Border Pipeline Company.

Description: Northern Border Pipeline Company submits tariff filing per 154.204: Allocation of Pipeline Capacity to be effective 3/14/2011.

Filed Date: 02/10/2011.

Accession Number: 20110210–5143.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: RP11–1770–000.

Applicants: Northwest Pipeline GP.
Description: Northwest Pipeline GP submits tariff filing per 154.204: JP Morgan Non-Conforming 2–10–2011 to be effective 3/14/2011.
Filed Date: 02/10/2011.
Accession Number: 20110210–5163.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: RP11–1771–000.
Applicants: Ozark Gas Transmission, L.L.C.
Description: Ozark Gas Transmission, L.L.C. submits tariff filing per 154.204: February 11, 2011 Clean-up Filing to be effective 8/13/2010.
Filed Date: 02/11/2011.
Accession Number: 20110211–5028.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 23, 2011.

Docket Numbers: RP11–1494–000.
Applicants: Kinder Morgan Interstate Gas Transmission LLC.
Description: Motion of Kinder Morgan Interstate Gas Transmission LLC for Adoption of Protective Order.
Filed Date: 01/11/2011.
Accession Number: 20110111–5104.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 16, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 11, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–4004 Filed 2–22–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–1632–001.
Applicants: Texas Eastern Transmission, LP.
Description: Texas Eastern Transmission, LP submits tariff filing per 154.203: Hourly Flow Compliance Filing to be effective 2/1/2011.
Filed Date: 02/03/2011.
Accession Number: 20110203–5084.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 15, 2011.

Docket Numbers: RP11–1703–001.
Applicants: CenterPoint Energy—Mississippi River Transmission, LLC.
Description: CenterPoint Energy—Mississippi River Transmission, LLC submits tariff filing per 154.205(b): Amend MRT LLC Name Change to be effective 1/1/2011.
Filed Date: 02/03/2011.
Accession Number: 20110203–5033.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 15, 2011.

Docket Numbers: RP11–1707–001.
Applicants: CenterPoint Energy Gas Transmission Company, LLC.
Description: CenterPoint Energy Gas Transmission Company, LLC submits tariff filing per 154.205(b): CEGT LLC Amended Name Change Filing to be effective 1/1/2011.
Filed Date: 02/03/2011.
Accession Number: 20110203–5149.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 15, 2011.

Docket Numbers: RP10–1385–001.
Applicants: West Texas Gas, Inc.
Description: West Texas Gas, Inc. submits tariff filing per 154.203: West Texas Gas Order No 714 Compliance Filing—Baseline Filing to be effective 9/30/2010.
Filed Date: 02/07/2011.
Accession Number: 20110207–5108.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: RP10–1395–001.
Applicants: Petal Gas Storage, L.L.C.
Description: Petal Gas Storage, L.L.C. submits tariff filing per 154.203: Compliance Baseline Tariff Filing to be effective 11/2/2010.
Filed Date: 02/08/2011.
Accession Number: 20110208–5071.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 9, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–4002 Filed 2–22–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2010–0832, FRL–9269–6]

Agency Information Collection Activities; Proposed Collection; Comment Request; Reporting and Recordkeeping Requirements Under EPA's WasteWise Program

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on June 30, 2011. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 25, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2010–0832, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: rcra-docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* RCRA Docket (28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* 1301 Constitution Ave., NW., Room 3334, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–RCRA–2010–0832. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Marian Robinson, Office of Resources & Conservation Recovery, 5306P, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8666; fax number: (703) 308–8686; e-mail address: *robinson.marian@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–RCRA–2010–0832, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for RCRA Docket is (202) 566–0270.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES.**

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are businesses, not-for-profit, and State, Local, or Tribal governments.

Title: Reporting and Recordkeeping Requirements Under EPA's WasteWise Program

ICR numbers: EPA ICR No. 1698.08, OMB Control No. 2050–0139

ICR status: This ICR is currently scheduled to expire on June 30, 2011. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA's voluntary WasteWise program encourages businesses and other organizations to reduce solid waste through waste prevention, recycling, and the purchase or manufacture of recycled-content products. WasteWise participants include partners, who commit to implementing waste reduction activities tailored to their specific needs, and endorsers who promote WasteWise and recruit organizations to join the program.

WasteWise requires partners to register for membership in the program. Previously, WasteWise used paper forms that we estimate took 40 hours for partners and 10 hours for endorsers to complete. In 2009, WasteWise implemented a Web-based data management and reporting system for the collection and reporting of data. Under the new Web-based system, partners and endorsers enter their data, on-line.

The *Partner Registration Form* identifies an organization and its facilities registering to participate in WasteWise, and requires the signature of a senior official that can commit the organization to the program. (This form completed on-line and is submitted electronically.) Within two months of registering, each partner is required to submit baseline data on existing waste reduction programs to EPA via an *Annual Assessment Form.* (This is an on-line form that is completed and submitted electronically.) Partners are also encouraged to set waste reduction goals for the upcoming year. On an annual basis, partners are required to report, via the Annual Assessment Form, on the accomplishments of their waste prevention and recycling activities. Partners report the amount of waste prevented and recycled, amount of recycled-content materials purchased, and (where appropriate) the amount of recovered materials used in the manufacture of new products. They also provide WasteWise with information on total waste prevention revenue, total recycling revenue, total avoided purchasing costs due to waste prevention, and total avoided disposal costs due to recycling and waste prevention. Additionally, they are encouraged to submit new waste reduction goals.

Endorsers, which are typically trade associations or State/local governments, submit an *Endorser Registration Form* upon registering for the program. (This is an on-line form that is completed and is submitted electronically.) The Endorser Registration Form identifies the organization, the principal contact, and the activities to which the Endorser commits. EPA plans to expand the information requested of Endorsers by requiring them to submit a summary of their endorser activities annually. All registration and reporting information will be submitted electronically using the existing on-line, Web-based data management and reporting system.

EPA's WasteWise program uses the submitted information to (1) identify and recognize outstanding waste reduction achievements by individual organizations, (2) compile results that indicate overall accomplishments of WasteWise members, (3) identify cost-effective waste reduction strategies to share with other organizations, (4) identify topics on which to develop technical assistance materials and other information, and (5) further encourage the growth of industry-specific sustainable practices.

Burden Statement: The respondent burden for this collection is estimated to average 4 hours per response for the Partner Registration Form, 48 hours per response for the Annual Assessment Form, 4 hours per response for the Endorser Registration Form, and 3 hours per response for the Endorser Annual Assessment Form. This results in an estimated annual partner respondent burden of 51 hours for new partners, 48 hours for established partners, 7 hours for new endorsers, and 3 hours for established endorsers. The estimated number of respondents is 1,051 in Year 1; 1,138 in Year 2; and 1,225 in Year 3. Estimated total annual burden on all respondents is 28,899 hours in Year 1; 32,572 hours in Year 2; and 35,773 hours in Year 3.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 1,875.

Frequency of response: Annual.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 70,950.

Estimated total annual costs: $0. This includes an estimated burden cost of $0 and an estimated cost of $0 for capital investment or maintenance and operational costs.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: January 31, 2011.

Suzanne Rudzinski,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2011–3995 Filed 2–22–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2010–0690; FRL–9270–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; EPA's Light-Duty In-Use Vehicle and Engine Testing Program (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 25, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2010–0690, to (1) EPA online using www.regulations.gov (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mailcode 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Lynn Sohacki, Compliance and Innovative Strategies Division, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105; *telephone number:* 734–214–4851; *fax number:* 734–214–4869; *e-mail address: sohacki.lynn@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 25, 2010 (75 FR 52326), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2010–0690, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: EPA's In-Use Vehicle and Engine Testing Programs (Renewal)

ICR numbers: EPA ICR No. 0222.09, OMB Control No. 2060–0086.

ICR Status: This ICR is scheduled to expire on February 28, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA has an ongoing program to evaluate the emission performance of in-use light-duty (passenger car and light truck) motor vehicles. This program operates in conjunction with testing of prototype vehicles prior to use (manufacturer and EPA confirmatory testing for certification) and the mandatory manufacturer's in-use testing program (IUVP) for light-duty vehicles. They derive from the Clean Air Act's charge that EPA insure that motor vehicles comply with emissions requirements throughout their useful lives. The primary purpose of the program is information gathering. Nevertheless, EPA can require a recall if it receives information, from whatever source, including in-use testing, that a "substantial number" of any class or category of vehicles or engines, although properly maintained and used, do not conform to the emission standards, when in actual use throughout their useful life.

The program can be broken down into three closely-related headings. The first is a surveillance program that selects approximately 50 classes of passenger cars and light trucks for in-use testing, at EPA's testing facility, totaling approximately 150 vehicles (three in each class on average). In rare cases surveillance testing may be followed by compliance testing (only four such classes in the last five years). The purpose of a compliance phase is to develop additional information related to test failures observed in a class during surveillance testing. The second heading is testing of a subset of approximately 35 vehicles from the surveillance recruitment for operation of on-board diagnostics (OBD) systems. The third category is special investigations involving testing of vehicles to address specific issues. The number of vehicles procured under this category varies widely from year to year, but this request asks for approval of the information burden corresponding to 25 such vehicles per year for the next three years.

Participation in the light-duty surveys, as well as the vehicle testing, is strictly voluntary. A group of 25 to 50 potential participants is identified from state vehicle registration records. They are asked to return a postcard indicating their willingness to participate and if so, to verify some limited vehicle information. Three of those who return the card are called and asked about a half dozen questions concerning vehicle condition, and operation and maintenance. Additional groups of potential participants may be contacted until a sufficient number of vehicles has been obtained. Owners verify the survey information when they deliver their vehicles to EPA, voluntarily provide maintenance records for copying, and receive a loaner car and/or a cash incentive.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average less than one hour

per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Individual and fleet owners of motor vehicles and engines.

Estimated Number of Respondents: Approximately 4,285 owners/lessees receive EPA's solicitations to participate and approximately 164 do participate.

Frequency of Response: On Occasion.

Estimated Total Annual Hour Burden: 521.

Estimated Total Annual Cost: $11,295, including $0 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 90 responses and 98 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease is entirely due to removal of the heavy-duty and non-road portions of this ICR, which will henceforth be covered under a different information collection request (OMB Control Number 2060–0287).

Dated: February 16, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–4006 Filed 2–22–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0563; FRL–9270–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; National Volatile Organic Compound Emission Standards for Consumer Products (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before March 25, 2011.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OAR–2007–0563, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget, *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Michael K. Ciolek, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (D243–05), Research Triangle Park, North Carolina 27711; *telephone number:* (919) 541–4921; *fax number:* (919) 541–1039; *e-mail address: ciolek.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On November 9, 2010 (75 FR 68783), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OAR–2007–0563, which is available for public viewing online at *http://www.regulations.gov,* in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. **Please note** that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: National Volatile Organic Compound Emission Standards for Consumer Products (Renewal).

ICR Numbers: EPA ICR Number 1764.05, OMB Control Number 2060–0348.

ICR Status: This ICR is scheduled to expire on February 28, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The information collection includes initial reports and periodic recordkeeping necessary for EPA to ensure compliance with Federal standards for volatile organic compounds in consumer products. Respondents are manufacturers, distributors, and importers of consumer products. Responses to the collection are mandatory under 40 CFR part 59, subpart C, National Volatile Organic Compound Emission Standards for Consumer Products. All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in 40 CFR part 2, subpart B, Confidentiality of Business Information.

Burden Statement: The annual public reporting and recordkeeping burden for

this collection of information is estimated to average 40 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers and importers of consumer products.

Estimated Number of Respondents: 732.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 29,613.

Estimated Total Annual Cost: $1,364,069 in labor costs; there are no capital/startup costs or O&M costs associated with this ICR.

Changes in the Estimates: There is no change in the labor hours or capital and O&M costs to the respondents in this ICR compared to the previous ICR because the regulations have not changed over the past three years and are not anticipated to change over the next three years. However, the change in labor costs for industry and EPA is due to the use of more current labor rates.

Dated: February 16. 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–4005 Filed 2–22–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9270–1]

Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2009

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability and request for comments.

SUMMARY: The Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2009 is available for public review. Annual U.S. emissions for the period of time from 1990 through 2009 are summarized and presented by source category and sector. The inventory contains estimates of carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFC), perfluorocarbons (PFC), and sulfur hexafluoride (SF_6) emissions. The inventory also includes estimates of carbon fluxes in U.S. agricultural and forest lands. The technical approach used in this report to estimate emissions and sinks for greenhouse gases is consistent with the methodologies recommended by the Intergovernmental Panel on Climate Change (IPCC), and reported in a format consistent with the United Nations Framework Convention on Climate Change (UNFCCC) reporting guidelines. The Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2009 is the latest in a series of annual U.S. submissions to the Secretariat of the UNFCCC.

DATES: To ensure your comments are considered for the final version of the document, please submit your comments within 30 days of the appearance of this notice. However, comments received after that date will still be welcomed and be considered for the next edition of this report.

ADDRESSES: Comments should be submitted to Mr. Leif Hockstad at: Environmental Protection Agency, Climate Change Division (6207J), 1200 Pennsylvania Ave., NW., Washington, DC 20460, *Fax:* (202) 343–2359. You are welcome and encouraged to send an email with your comments to *hockstad.leif@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Leif Hockstad, Environmental Protection Agency, Office of Air and Radiation, Office of Atmospheric Programs, Climate Change Division, (202) 343–9432, *hockstad.leif@epa.gov.*

SUPPLEMENTARY INFORMATION: The draft report can be obtained by visiting the U.S. EPA's Climate Change Site at: *http://www.epa.gov/climatechange/emissions/usinventoryreport.html.*

Dated: February 16, 2011.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2011–3999 Filed 2–22–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0005; FRL–8861–9]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register new uses for pesticide products containing currently registered active ingredients, pursuant to the provisions of section 3(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. EPA is publishing this notice of such applications, pursuant to section 3(c)(4) of FIFRA.

DATES: Comments must be received on or before March 25, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number specified within the registration application summaries in Unit II., by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number specified for the pesticide of interest as shown in the registration application summaries in Unit II. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which

means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: A contact person is listed at the end of each registration application summary and may be contacted by telephone or e-mail. The mailing address for each contact person listed is: Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 and Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number). If you are commenting in a docket that addresses multiple products, please indicate to which registration number(s) your comment applies.

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA received applications as follows to register pesticide products containing currently registered active ingredients pursuant to the provisions of section 3(c) of FIFRA, and is publishing this notice of such applications pursuant to section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

1. *Registration Number/File Symbol:* 279–3124, 279–3125, 279–3126. *Docket Number:* EPA–HQ–OPP–2010–0472. *Company name and address:* FMC Corporation, 1735 Market St., Philadelphia, PA 19103. *Active ingredient:* Zeta-Cypermethrin. *Proposed Uses:* Avocado, black sapote, canistel, mamey sapote, mango, papaya, sapodilla, star apple. *Contact:* Linda DeLuise, Registration Division, (703) 305–5428, *deluise.linda@epa.gov.*

2. *Registration Number/File Symbol:* 707–GEN, 707–GRO. *Docket Number:* EPA–HQ–OPP–2010–1037. *Company name and address:* Rohm and Hass Company, 100 Independence Mall West, Philadelphia, PA 19106. *Active ingredient:* 2-Methyl-1, 2-benzisothiazol-3 (2H)-one. *Proposed Uses:* For use in ATD emulsion products, paints, building materials, adhesives and sealants, ink, textiles, paper coating, functional chemicals, household and I&I, oil process water and recovery system, metalworking fluids. *Contact:* Abigail Downs, Antimicrobials Division, (703) 305–5259, *downs.abigail@epa.gov.*

3. *Registration Number/File Symbol:* 1677–EGU. *Docket Number:* EPA–HQ–OPP–2010–1035. *Company name and address:* ECOLAB Inc., 370 North Wabasha St., St. Paul, MN 55102. *Active ingredient:* L-lactic acid *Proposed Use:* Commercial water additive in fruit and vegetable processing and wash. *Contact:* Jacqueline Campbell-McFarlane, Antimicrobials Division, (703) 308–6416, *campbell-mcafarlane.jacqueline@epa.gov.*

4. Registration Number/File Symbol: 5383–RUE. *Docket Number:* EPA–HQ–OPP–2009–1000. *Company name and*

address: Troy Chemical, Inc., 8 Vreeland Rd., P.O. Box 955, Florham Park, NJ 07932–4200. *Active ingredient:* Terbutryn. *Proposed Uses:* Materials preservation of coatings, stuccos, roof coatings, joint cements, and sealants. *Contact:* Jacqueline Campbell-McFarlane, Antimicrobials Division, (703) 308–6416, *campbell-mcafarlane.jacqueline@epa.gov.*

5. Registration Number/File Symbol: 5383–RUN. *Docket Number:* EPA–HQ–OPP–2009–1000. *Company name and address:* Troy Chemical, Inc., 8 Vreeland Rd., P.O. Box 955, Florham Park, NJ 07932–4200. *Active ingredient:* Terbutryn. *Proposed Uses:* Materials preservation of joint cements, coatings, sealants, stuccos, and plastics. *Contact:* Jacqueline Campbell-McFarlane, Antimicrobials Division, (703) 308–6416, *campbell-mcafarlane.jacqueline@epa.gov.*

6. Registration Number/File Symbol: 6836–322. *Docket Number:* EPA–HQ–OPP–2010–1034. *Company name and address:* Lonza Inc., 90 Borderline Rd., Allendale, NJ 07401. *Active ingredient:* 1, 3-Bis (hydroxymethyl)-5, 5-dimethylhydantoin and Hydroxymethyl-5, 5-dimethylhydantoin. *Proposed Use:* Secondary oil recovery for hydantonins. *Contact:* Jacqueline Campbell-McFarlane, Antimicrobials Division, (703) 308–6416, *campbell-mcafarlane.jacqueline@epa.gov.*

7. Registration Number/File Symbol: 8033–20, 8033–96, and 8033–109. *Docket Number:* EPA–HQ–OPP–2011–0007. *Company name and address:* Nippon Soda Co., Ltd., c/o Nisso America Inc., 45 Broadway, Suite 2120, New York, NY 10006. *Active ingredient:* Acetamiprid. *Proposed Use:* Food/feed handling establishments. *Contact:* Jennifer Urbanski, Registration Division, (703) 347–0156, *urbanski.jennifer@epa.gov.*

8. Registration Number/File Symbol: 11556–RLU, 11556–RLL. *Docket Number:* EPA–HQ–OPP–2011–0013. *Company name and address:* Bayer HealthCare LLC, Animal Health Division, P.O. Box 390, Shawnee Mission, Kansas 66201–0390. *Active ingredient:* Flumethrin. *Proposed Uses:* Dogs and cats. *Contact:* BeWanda Alexander, Registration Division, (703) 305–7460, *alexander.bewanda@epa.gov.*

9. Registration Number/File Symbol: 59639–107 and 59639–138. *Docket Number:* EPA–HQ–OPP–2010–0968. *Company name and address:* Valent U.S.A. Corp, 1600 Riviera Ave., Suite 200, Walnut Creek, CA 94596. *Active ingredient:* Etoxazole. *Proposed Use:* Corn and popcorn. *Contact:* Autumn Metzger, Registration Division, (703) 305–5314, *metzger.autumn@epa.gov.*

10. Registration Number/File Symbol: 65402–8. *Docket Number:* EPA–HQ–OPP–2010–1030. *Company name and address:* FMC Corporation, Peroxygens Division, 1735 Market St., Philadelphia, PA 19103, Submitted by: Keller and Heckman, LLC, 1001 G St., NW., Washington, DC 20001. *Active ingredient:* Hydrogen Peroxide at 23% and Ethaneperoxoic Acid at 15%. *Proposed Use:* To treat sewage and wastewater effluent related to public and private wastewater treatment plants. *Contact:* Karen M. Leavy, Antimicrobials Division, (703) 308–6237, *leavy.karen@epa.gov.*

11. Registration Number/File Symbol: 87358–R. *Docket Number:* EPA–HQ–OPP–2010–1038. *Company name and address:* Quick-Med Technologies, Inc., 160 West Camino Real, #238, Boca Raton, FL 33432. *Active ingredient:* Hydrogen Peroxide. *Proposed Use:* Materials preservative applied to textiles for commercial and industrial use only. *Contact:* Martha Terry, Antimicrobials Division, (703) 308–6217, *terry.martha@epa.gov.*

List of Subjects

Environmental protection, Pesticides and pest.

Dated: February 10, 2011.

G. Jeffrey Herndon,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2011–3717 Filed 2–22–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9269–7]

Settlement Agreement for Recovery of Past Response Costs 10,000 Havana Street Site, Commerce City, Adams County, CO

AGENCY: Environmental Protection Agency.

ACTION: Notice and request for public comment.

SUMMARY: In accordance with the requirements of Section 122(i)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i)(1), notice is hereby given of a Settlement Agreement under Sections 104, 106(a), 107, and 122 of CERCLA, 42 U.S.C. 9604, 9606(a), 9607, and 9622, between the United States Environmental Protection Agency (EPA) and Cricket Mascarenas (Settling Party) regarding the 10,000 Havana Street Site (Site), located at 10,000 Havana Street, Henderson, Colorado. This Settlement Agreement proposes to compromise a claim the United States has at this Site for Past Response Costs, as those terms are defined in the Settlement Agreement. Under the terms of the Settlement Agreement, EPA and the Settling Party agree that the Settling Party has no ability to pay and the Settling Party agrees not to assert any claims or causes of action against the United States or its contractors or employees with respect to the Site. In exchange, the Settling Party will be granted a covenant not to sue under Section 107(a) of CERCLA, 42 U.S.C. 9607(a), with regard to reimbursement of Past Response Costs.

Opportunity for Comment: For thirty (30) days following the publication of this notice, EPA will consider all comments received and may modify or withdraw its consent to that portion of the Settlement Agreement, if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection at the Superfund Record Center, EPA Region 8, 1595 Wynkoop Street, 3rd Floor, in Denver, Colorado.

DATES: Comments must be submitted on or before March 25, 2011.

ADDRESSES: The Settlement Agreement and additional background information relating to the settlement are available for public inspection at the Superfund Records Center, EPA Region 8, 1595 Wynkoop Street, 3rd Floor, in Denver, Colorado. Comments and requests for a copy of the Settlement Agreement should be addressed to Judith Binegar, Enforcement Specialist (8ENF–RC), Technical Enforcement Program, U.S. Environmental Protection Agency, 1595 Wynkoop Street, Denver, Colorado 80202–1129, and should reference the 10,000 Havana Settlement Agreement for the 10,000 Havana Site in Henderson, Adams County, Colorado.

FOR FURTHER INFORMATION CONTACT: Judith Binegar, Enforcement Specialist, (8ENF–RC), Technical Enforcement Program, U.S. Environmental Protection Agency, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6606.

It Is So Agreed:

Andrew M. Gaydosh,

Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, U.S. Environmental Protection Agency, Region 8.

[FR Doc. 2011–3997 Filed 2–22–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

February 15, 2011.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 25, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information, contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0419.

Title: Sections 76.94, Notification; 76.95, Exceptions; 76.105, Notification; 76.106, Exceptions; 76.107, Exclusivity contracts; and 76.1609, Non duplication and Syndicated Exclusivity.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 5,555 respondents; 199,304 responses.

Estimated Time per Response: 0.5–2.0 hours.

Frequency of Response: On occasion reporting requirement; One time reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Section 4(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 183,856.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: 47 CFR 76.94(a) and 76.105(a) require television stations and program distributors to notify cable television system operators of non-duplication protection and exclusivity rights being sought. The notification shall include (1) The name and address of the party requesting non-duplication protection/exclusivity rights and the television broadcast station holding the non-duplication right; (2) the name of the program or series for which protection is sought; and (3) the dates on which protection is to begin and end.

47 CFR 76.94(b) requires broadcasters entering into contracts providing for network non-duplication protection to notify cable systems within 60 days of the signing of such a contract. If they are unable to provide notices as provided for in Section 74.94(a), they must provide modified notices that contain the name of the network which has extended non-duplication protection, the time periods by time of day and by network for each day of the week that the broadcaster will be broadcasting programs from that network, and the duration and extent of the protection.

47 CFR 76.94(d) requires broadcasters to provide the following information to cable television systems under the following circumstances: (1) In the event the protection specified in the notices described in 47 CFR 76.94(a) or (b) has been limited or ended prior to the time specified in the notice, or in the event a time period, as identified to the cable system in a notice pursuant to Section 76.94(b) for which a broadcaster has obtained protection is shifted to another time of day or another day (but not expanded), the broadcaster shall, as soon as possible, inform each cable television system operator that has previously received the notice of all changes from the original notice. Notice to be furnished "as soon as possible" under this subsection shall be furnished by telephone, telegraph, facsimile, overnight mail or other similar expedient means. (2) In the event the protection specified in the modified notices described in Section 76.94(b) has been expanded, the broadcaster shall, at least 60 calendar days prior to broadcast of a protected program entitled to such expanded protection, notify each cable system operator that has previously received notice of all changes from the original notice.

47 CFR 76.94(e)(2) and 76.105(c)(2) state that if a cable television system asks a television station for information about its program schedule, the television station shall answer the request.

47 CFR 76.94(f) and 76.107 require a distributor or broadcaster exercising exclusivity to provide to the cable system, upon request, an exact copy of those portions of the contracts, such portions to be signed by both the network and the broadcaster, setting forth in full the provisions pertinent to the duration, nature, and extent of the non-duplication terms concerning broadcast signal exhibition to which the parties have agreed. Providing copies of relevant portions of the contracts is assumed to be accomplished in the notification process set forth in Sections 76.94 and 76.105.

47 CFR 76.95 states that the provisions of Sections 76.92 through 76.94 (including the notification provisions of Section 76.94) shall not apply to a cable system serving fewer than 1,000 subscribers. Within 60 days following the provision of service to 1,000 subscribers, the operator of each such system shall file a notice to that effect with the Commission, and serve a copy of that notice on every television station that would be entitled to exercise network non-duplication protection against it.

47 CFR 76.105(d) requires that in the event the exclusivity specified in Section 76.94(a) has been limited or has ended prior to the time specified in the notice, the distributor or broadcaster who has supplied the original notice shall, as soon as possible, inform each cable television system operator that has previously received the notice of all changes from the original notice. In the event the original notice specified contingent dates on which exclusivity is to begin and/or end, the distributor or broadcaster shall, as soon as possible, notify the cable television system

operator of the occurrence of the relevant contingency. Notice to be furnished "as soon as possible" under this subsection shall be furnished by telephone, telegraph, facsimile, overnight mail or other similar expedient means.

47 CFR 76.106(b) states that the provisions of Sections 76.101 through 76.105 (including the notification provisions of Section 76.105) shall not apply to a cable system serving fewer than 1,000 subscribers. Within 60 days following the provision of service to 1,000 subscribers, the operator of each such system shall file a notice to effect with the Commission, and serve a copy of that notice on every television station that would be entitled to exercise syndicated exclusivity protection against it.

47 CFR 76.1609 states that network non-duplication provisions of Sections 76.92 through 76.94 shall not apply to cable systems serving fewer than 1,000 subscribers. Within 60 days following the provision of service to 1,000 subscribers, the operator of each system shall file a notice to that effect with the Commission, and serve a copy of that notice on every television station that would be entitled to exercise network non-duplication or syndicated exclusivity protection against it.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–3958 Filed 2–22–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

February 17, 2011.

Summary: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

Dates: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 25, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

Addresses: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via e-mail to *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov.*

For Further Information Contact: For additional information, contact Cathy Williams on (202) 418–2918.

Supplementary Information:

OMB Control Number: 3060–0423.

Title: Section 73.3588, Dismissal of Petitions to Deny or Withdrawal of Informal Objections.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 50 respondents; 50 responses.

Estimated Time per Response: 20 minutes (0.33 hours).

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 17 hours.

Total Annual Cost: 63,750.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: 47 CFR 73.3588 states whenever a petition to deny or an informal objection has been filed against any applications for renewal, new construction permits, modifications, and transfers/assignments, and the filing party seeks to dismiss or withdraw the petition to deny or the informal objection, either unilaterally or in exchange for financial consideration, that party must file with the Commission a request for approval of the dismissal or withdrawal. This request must include the following documents: (1) A copy of any written agreement related to the dismissal or withdrawal, (2) an affidavit stating that the petitioner has not received any consideration in excess of legitimate and prudent expenses in exchange for dismissing/withdrawing its petition, (3) an itemization of the expenses for which it is seeking reimbursement, and (4) the terms of any oral agreements related to the dismissal or withdrawal of the petitions to deny. Each remaining party to any written or oral agreement must submit an affidavit within 5 days of petitioner's request for approval stating that it has paid no consideration to the petitioner in excess of the petitioner's legitimate and prudent expenses. The affidavit must also include the terms of any oral agreements relating to the dismissal or withdrawal of the petition to deny.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–3986 Filed 2–22–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 ("PRA"), 44 U.S.C. 3501 *et seq.,* the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal

of an existing information collection, as required by the PRA. On December 6, 2010 (75 FR 75675), the FDIC solicited public comment for a 60-day period on renewal of the following information collection: Procedures for Monitoring Bank Secrecy Act Compliance (OMB No. 3064–0087). No comments were received. Therefore, the FDIC hereby gives notice of submission of its requests for renewal to OMB for review.

DATES: Comments must be submitted on or before March 25, 2011.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *E-mail: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202–898–3719), Counsel, Room F–1086, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, at the FDIC address above.

SUPPLEMENTARY INFORMATION: *Proposal to renew the following currently approved collection of information:*

Title: Procedures for Monitoring Bank Secrecy Act Compliance.

OMB Number: 3064–0087.

Frequency of Response: On occasion.

Affected Public: Insured state nonmember banks.

Estimated Number of Respondents: 4,822.

Estimated Time per Response: 67.5 hours.

Total Annual Burden: 325,620 hours.

General Description of Collection: Respondents must establish and maintain procedures designed to assure and monitor their compliance with the requirements of the Bank Secrecy Act and the implementing regulations promulgated by the Department of Treasury at 31 CFR part 103. Respondents must also provide training for appropriate personnel.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 17th day of February 2011.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–3988 Filed 2–22–11; 8:45 am]

BILLING CODE 6741–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 9 a.m. (Eastern Time), February 28, 2011.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC 20005.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the January 25, 2011 Board member meeting.

2. Thrift Savings Plan activity report by the Executive Director.

a. Monthly Participant Activity Report.

b. Quarterly Investment Policy Review.

c. Legislative Report.

Parts Closed to the Public

1. Confidential Financial Information.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: February 18, 2011.

Megan G. Grumbine,

Assistant General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2011–4131 Filed 2–18–11; 4:15 pm]

BILLING CODE 6760–01–P

GENERAL SERVICES ADMINISTRATION

[2010–PBS–2; Docket 2011–0006; Sequence 6]

Notice of Intent To Prepare an Environmental Assessment, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting

AGENCY: Public Building Services (PBS); General Services Administration (GSA).

ACTION: Notice of intent to prepare an Environmental Assessment, request for comments on Environmental Issues, and Notice of Public Scoping Meeting.

SUMMARY: The General Services Administration (GSA) will prepare an Environmental Assessment (EA) that will analyze and discuss the environmental impacts of renovations of the Charles F. Prevedel Federal Building and demolition of buildings 100, 101, and 102 at the Federal Records Center, Page Complex, located in Overland, Missouri. Through the project, GSA proposes to relocate Federal tenants into the Charles F. Prevedel Federal Building. The Page Federal Complex is located at 9700 Page Blvd., Overland, Missouri, which is in Missouri's 1st Congressional District.

In the EA, GSA will discuss impacts that could occur as a result of the construction and operation of the proposed project. GSA will also evaluate the "No Action" and other reasonable alternatives to the proposed project, or portions of the project, and consider how to lessen or avoid impacts on the various resource areas.

DATES: *Comment date:* Submit comments on or before March 17, 2011.

Public meeting date is: February 28, 2011, 2 p.m. to 3:30 p.m., Prevedel Federal Building, 9700 Page Blvd., Overland, Missouri 63132.

ADDRESSES: Submit comments identified by Notice 2010–PBS–2, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "Notice 2010–PBS–2" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "Notice 2010–PBS–2." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Notice 2010–PBS–2" on your attached document.
- Comments can also be filed electronically, by e-mail, to *r06nepa@gsa.gov.*

Instructions: Please submit comments only and cite "Notice 2010–PBS–2.", in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Jeremiah Nelson, GSA Regional NEPA Coordinator, 1500 East Bannister Road, Room 2135 (6PTA), Kansas City, Missouri 64131; Telephone (816) 823–5803.

SUPPLEMENTARY INFORMATION:

General: This EA is being prepared pursuant to the National Environmental Policy Act, 42 U.S.C. 4321 (NEPA), and regulations implementing NEPA issued by the Council on Environmental Quality (40 CFR 1500–1508), GSA ADM 1095.1, the GSA PBS NEPA Desk Guide and other applicable regulations and policies. The EA will inform GSA in its decision-making process. Compliance with the National Historic Preservation Act (NHPA), including NHPA Section 106, and other laws and requirements, will be coordinated with this EA process, and government agencies that are affected by the proposed actions or have special expertise will be consulted. An independent analysis of the issues will be presented in the EA. The EA will be placed in the public record and a comment period will be allotted on the Draft EA. GSA will consider all comments on the EA before making a final decision.

Purpose of Notice: The purpose of this notice is to (1) Announce GSA's intent to prepare an EA; (2) announce the initiation of the public scoping process; (3) invite public participation during the scoping process and at the public scoping meeting; and (4) request public comments on the scope of the EA, including the potential environmental impacts associated with the proposed action.

Further Information on Public Participation and Dates: The public is encouraged to provide GSA with specific comments or concerns about the project. Comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts.

In addition to the above methods for submission of comments, those interested may also file a paper copy of comments, by regular mail, to Jeremiah Nelson, GSA Region 6 NEPA Coordinator, 1500 E. Bannister Road, Room 2135, Kansas City, Missouri 64131 or verbally offer comments to GSA's Region 6 NEPA Coordinator by calling (816) 823–5803. Again, comments should be sent to GSA on or before March 17, 2011. With any comments, before including address, phone number, e-mail address, or other personal identifying information in your comment, be advised that the entire comment, including personal identifying information, may be made publicly available at any time. While you can ask in your comment to withhold from public review personal identifying information, GSA cannot guarantee that it will be able to do so.

Finally, in lieu of or in addition to sending written comments, GSA also invites you to attend the public scoping meeting scheduled and discussed in the body of this notice, above. Comments made at the public scoping meeting will also be considered in the EA process.

State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

A fact sheet prepared by GSA will be made available at the Public Scoping Meeting and will be posted to a GSA Project Web site (*http://www.gsa.gov/r6news*), thereafter.

Dated: February 17, 2011.

Kevin D. Rothmier,

Director of Portfolio Management (6PT), U.S. General Services Administration, PBS, Heartland Region.

[FR Doc. 2011–3967 Filed 2–22–11; 8:45 am]

BILLING CODE 6820–CG–P

GENERAL SERVICES ADMINISTRATION

[Notice MC–2011–1; Docket No. 2011–0006; Sequence 5]

The President's Management Advisory Board (PMAB); Notification of Upcoming Public Advisory Meeting

AGENCY: Office of Executive Councils, U.S. General Services Administration (GSA).

ACTION: Notice.

SUMMARY: The President's Management Advisory Board, a Federal Advisory Committee established in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C., App., and Executive Order 13538, will hold a public meeting on March 11, 2011.

DATES: *Effective date:* February 23, 2011.

Meeting date: The meeting will be held on Friday, March 11, 2011, beginning at 10 a.m. eastern time, ending no later than 12 p.m.

ADDRESSES: The PMAB will convene its first meeting in the Eisenhower Executive Office Building, 1650 Pennsylvania Avenue, NW., Washington, DC. Due to security, there will be no public admittance to the Eisenhower Building to attend the meeting. However, public access to the meeting will be available via live webcast at *http://www.whitehouse.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Jill Schiller, Alternate Designated Federal Officer, President's Management Advisory Board, Office of Executive Councils, General Services Administration, 1776 G Street, NW., Washington, DC 20220, at *jill.schiller@cxo.gov.*

SUPPLEMENTARY INFORMATION:

Background: The purpose of this meeting is to discuss general organizational matters of the PMAB and begin discussing the issues impacting the management techniques of the Nation's government. The PMAB was established to provide independent advice and recommendations to the President and the President's Management Council on a wide range of issues related to the development of effective strategies for the implementation of best business practices to improve Federal Government management and operation, with a particular focus on productivity, the application of technology, and customer service.

Availability of Materials for the Meeting: Please see the PMAB Web site for any available materials, including the draft agenda for this meeting at *http://www.whitehouse.gov.* Questions/issues of particular interest to PMAB will also be made available to the public on this Web site. The public should address any of these questions/issues when presenting written statements to PMAB.

Procedures for Providing Public Comments: In general, statements will be posted on the White House Web site (*http://www.whitehouse.gov*), and should include business or personal information such as names, addresses, email addresses, or telephone numbers. Non-electronic documents will be made available for public inspection and copying in PMAB offices at GSA, 1776 G Street, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. eastern time. You can make an appointment to inspect statements by telephoning (202) 208–2664. All statements, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. Any statements submitted in connection with the PMAB meeting will be made available to the public under the

provisions of the Federal Advisory Committee Act.

The public is invited to submit written statements for this meeting to the Advisory Committee prior to the meeting until March 9, 2011, by either of the following methods:

Electronic Statements: Submit written statements to Jill Schiller, Alternate Designated Federal Officer at *jill.schiller@cxo.gov;* or

Paper Statements: Send paper statements in triplicate to Jill Schiller at President's Management Advisory Board, Office of Executive Councils, General Services Administration, 1776 G Street, NW., Washington, DC 20220.

Meeting Accommodations: Public access to the meeting will be available via live webcast only at *http://www.whitehouse.gov.*

Dated: February 16, 2011.

Robert Flaak,

Director, Office of Committee and Regulatory Management, General Services Administration.

[FR Doc. 2011–3954 Filed 2–22–11; 8:45 am]

BILLING CODE 6820–38–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[30-day notice]

Agency Information Collection Request. 30-Day Public Comment Request, Grants.gov

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, to *Ed.Calimag@hhs.gov,* or call the Reports Clearance Office on (202) 690–7569. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the Grants.gov OMB Desk Officer; faxed to OMB at 202–395–6974.

Proposed Project: SF–424 Mandatory Form—OMB No. 4040–0002- Reinstatement with Change- Grants.gov Office.

Abstract: Grants.gov is requesting OMB approval to reinstate with change the previously approved SF 424 Mandatory form (4040–0002) for three years. The fax number in block 17 will be changed to be an optional entry. The Mandatory form is the common form used by Federal grant-making agencies for grant applications under mandatory grant programs. It replaced numerous agency-specific forms. The form reduces the administrative burden to the Federal grants community, which includes applicants/grantees and Federal staff involved in grants-related activities.

ESTIMATED ANNUALIZED BURDEN TABLE

Agency	SF–424 Mandatory number of annual respondents	Number of responses per respondent	Total annual responses	Average burden on respondent per response in hours	Total burden hours
CNCS	0	1	0	1	0
COMMERCE	0	1	0	1	0
DHS	1329	1	1329	1	1329
DOD	2	1	2	1	2
DOE	0	1	0	1	0
DOI	180	1	180	1	180
DOL	2528	1	2528	1	2528
DOT	148	1	148	1	148
ED	0	1	0	1	0
EPA	0	1	0	1	0
HHS	7814	1	7814	1	7814
HUD	0	1	0	1	0
IMLS	0	1	0	1	0
NARA	0	1	0	1	0
NASA	0	1	0	1	0
NEA	98	1	98	1	98
NEH	0	1	0	1	0
NIST	639	1	639	1	639
NRC	0	1	0	1	0
NSF	0	1	0	1	0
SBA	853	1	853	1	853
SSA	115	1	115	1	115
STATE	3,644	1	3644	1	3644
TREASURY	0	1	0	1	0
USAID	20	1	20	1	20
USDA	116,526	1	116526	1	116526
USDOJ	77	1	77	1	77
VA	591	1	591	1	591
Total	134,564	.....	134,564	134,564	

Seleda Perryman,

Office of the Secretary, HHS PRA Reports Clearance Officer.

[FR Doc. 2011–3960 Filed 2–22–11; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[30-day notice]

Agency Information Collection Request. 30-Day Public Comment Request, Grants.gov

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, to *Ed.Calimag@hhs.gov,* or call the Reports Clearance Office on (202) 205–1193. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the Grants.gov OMB Desk Officer; faxed to OMB at 202–395–6974.

Proposed Project: The SF–424B Assurances—Non-Construction Programs—Reinstatement with Change-OMB No. 4040–0007 –Grants.gov Office.

Abstract: Grants.gov is requesting OMB approval to reinstate with change the previously approved SF–424B Assurances—Non-Construction Programs (SF–424B) form (4040–0007) for three years. The information will reflect the updated changes to the legal citations located within the United States Code. The "Trafficking Victims Protection Act of 2000" (Section 106), as amended (22 U.S.C. 7104 (g) has been added in Section 18.

The SF–424B is used to provide information on required assurances when applying for non-construction Federal grants. The Federal awarding agencies use information reported on the form for the evaluation of award and general management of Federal assistance program awards. The only information collected on the form is the applicant signature, title and date submitted.

ESTIMATED ANNUALIZED BURDEN HOUR TABLE

Agency	SF–424 B No. of annual respondents	No. of responses per respondent	Total annual responses	Average burden on respondent per response in hours	Total burden hours
CNCS	5181	1	5181	30/60	2591
COMMERCE	6151	1	6151	30/60	3076
DHS	2493	1	2493	30/60	1247
DOD	5	1	5	30/60	3
DOE	0	1	0	30/60	0
DOI	1144	1	1144	30/60	572
DOL	2265	1	2265	30/60	1133
DOT	893	1	893	30/60	447
ED	0	1	0	30/60	0
EPA	4000	1	4000	30/60	2000
HHS	12682	1	12682	30/60	6341
HUD	0	1	0	30/60	0
IMLS	0	1	0	30/60	0
NARA	0	1	0	30/60	0
NASA	0	1	0	30/60	0
NEA	0	1	0	30/60	0
NEH	0	1	0	30/60	0
NIST	446	1	446	30/60	223
NRC	233	1	233	30/60	117
NSF	0	1	0	30/60	0
SBA	827	1	827	30/60	414
SSA	115	1	115	30/60	58
STATE	0	1	0	30/60	0
TREASURY	478	1	478	30/60	239
USAID	304	1	304	30/60	152
USDA	9027	1	9027	30/60	4514
USDOJ	77	1	77	30/60	39
VA	200	1	200	30/60	100
TOTAL					23,266

Seleda Perryman,

Office of the Secretary, HHS PRA Reports Clearance Officer.

[FR Doc. 2011–3962 Filed 2–22–11; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[30-day notice]

Agency Information Collection Request. 30-Day Public Comment Request, Grants.gov

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, to *Ed.Calimag@hhs.gov,* or call the Reports Clearance Office on (202) 205–1193. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the Grants.gov OMB Desk Officer; faxed to OMB at 202–395–6974.

Proposed Project: The SF–424D Assurances—Construction Programs—OMB No. 4040–0009–Reinstatement with Change-Grants.gov Office.

Abstract: Grants.gov is requesting OMB approval to reinstate with change the previously approved the SF–424D Assurances—Construction Programs (SF–424D) form (4040–0009) for three years. The change will be to the legal citations which have been updated to reflect changes in location within the United States Code. The "Trafficking Victims Protection Act of 2000 (Section 106)", as amended (22 U.S.C. 7104 (g) has been added in Section 19.

The SF–424D is used to provide information on required assurances when applying for construction Federal grants. The Federal awarding agencies use information reported on the form for the evaluation of award and general management of Federal assistance program awards. The only information collected on the form is the applicant signature, title and date submitted.

ESTIMATED ANNUALIZED BURDEN TABLE

Agency	SF–424D No. of annual respondents	No. of responses per respondent	Total annual responses	Average burden on respondent per response in hours	Total burden hours
CNCS	0	1	0	30/60	0
COMMERCE	1908	1	1908	30/60	954
DHS	1421	1	1421	30/60	711
DOD	1	1	1	30/60	1
DOE	0	1	0	30/60	0
DOI	77	1	77	30/60	39
DOL	0	1	0	30/60	0
DOT	55	1	55	30/60	28
ED	0	1	0	30/60	0
EPA	0	1	0	30/60	0
HHS	52	1	52	30/60	26
HUD	0	1	0	30/60	0
IMLS	0	1	0	30/60	0
NARA	0	1	0	30/60	0
NASA	0	1	0	30/60	0
NEA	0	1	0	30/60	0
NEH	0	1	0	30/60	0
NIST	193	1	193	30/60	97
NRC	0	1	0	30/60	0
NSF	0	1	0	30/60	0
SBA	26	1	26	30/60	13
SSA	0	1	0	30/60	0
STATE	0	1	0	30/60	0
TREASURY	0	1	0	30/60	0
USAID	289	1	289	30/60	145
USDA	727	1	727	30/60	364
USDOJ	0	1	0	30/60	0
VA	391	1	391	30/60	196
Total					2,574

Seleda Perryman,

Office of the Secretary, HHS PRA Reports Clearance Officer.

[FR Doc. 2011–3964 Filed 2–22–11; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[30-day notice]

Agency Information Collection Request. 30-Day Public Comment Request, Grants.gov

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, to *Ed.Calimag@hhs.gov,* or call the Reports Clearance Office on (202) 205–1193. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the Grants.gov OMB Desk Officer; faxed to OMB at 202–395–6974.

Proposed Project: The SF424C Budget Information—Construction Programs—Reinstatement with Change—OMB No. 4040–0008—Grants.gov Office.

Abstract: Grants.gov is requesting OMB approval to reinstate with change the previously approved the SF424C Budget Information—Construction Programs (SF424C) form (4040–0008) for three years. This form will be utilized by up to 26 Federal grant making agencies.

The SF424C is used to provide budget information when applying for construction Federal grants. The Federal awarding agencies use information reported on the form for the evaluation of award and general management of Federal assistance program awards.

ESTIMATED ANNUALIZED BURDEN TABLE

Agency	SF–424C No. of annual respondents	No. of responses per respondent	Total annual responses	Average burden on respondent per response in hours	Total burden hours
CNCS	0	1	0	1	0
COMMERCE	1908	1	1908	1	1908
DHS	1421	1	1421	1	1421
DOD	1	1	1	1	1
DOE	0	1	0	1	0
DOI	131	1	131	1	131
DOL	0	1	0	1	0
DOT	50	1	50	1	50
ED	0	1	0	1	0
EPA	0	1	0	1	0
HHS	52	1	52	1	52
HUD	0	1	0	1	0
IMLS	0	1	0	1	0
NARA	0	1	0	1	0
NASA	0	1	0	1	0
NEA	0	1	0	1	0
NEH	0	1	0	1	0
NIST	193	1	193	1	193
NRC	1	1	1	1	1
NSF	0	1	0	1	0
SBA	26	1	26	1	26
SSA	0	1	0	1	0
STATE	0	1	0	1	0
TREASURY	0	1	0	1	0
USAID	294	1	294	1	294
USDA	7879	1	7879	1	7879
USDOJ	0	1	0	1	0
VA	391	1	391	1	391
Total					12,347

Seleda Perryman,

Office of the Secretary, HHS PRA Reports Clearance Officer.

[FR Doc. 2011–3963 Filed 2–22–11; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[30-day notice]

Agency Information Collection Request. 30-Day Public Comment Request, Grants.gov

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, to *Ed.Calimag@hhs.gov,* or call the Reports Clearance Office on (202) 205–1193. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the Grants.gov OMB Desk Officer; faxed to OMB at 202–395–6974.

Proposed Project: The SF–424A Budget Information—Non-Construction Programs—Reinstatement with Change—OMB No. 4040–0006—Grants.gov Office.

Abstract: Grants.gov is requesting OMB approval to reinstate with change the previously approved the SF–424A Budget Information—Non-Construction Programs (SF–424A) form (4040–0006) for three years. We are renewing the form with two proposed changes to the instructions only. In the "General Instructions" section, the following sentence is added as the last sentence: "In ALL cases total funding budgets should be reflected NOT only incremental budget request changes." Also, in the "Section B Budget Categories" section, the last sentence is revised as follows: "For each program, function or activity, fill in the total requirements for funds, Federal funding only, by object class categories."

The SF–424A is used to provide budget information when applying for non-construction Federal grants. The Federal awarding agencies use information reported on the form for the evaluation of award and general management of Federal assistance program awards.

ESTIMATED ANNUALIZED BURDEN HOUR TABLE

Agency	SF–424A number of annual respondents	Number of responses per respondent	Total annual responses	Average burden on respondent per response in hours	Total burden hours
CNCS	0	1	0	1	0
COMMERCE	6151	1	6151	1	6151
DHS	2493	1	2493	1	2493
DOD	5	1	5	1	5
DOE	0	1	0	1	0
DOI	1144	1	1144	1	1144
DOL	2265	1	2265	1	2265
DOT	893	1	893	1	893
ED	0	1	0	1	0
EPA	4000	1	4000	1	4000
HHS	12682	1	12682	1	12682
HUD	0	1	0	1	0
IMLS	0	1	0	1	0
NARA	0	1	0	1	0
NASA	0	1	0	1	0
NEA	0	1	0	1	0
NEH	0	1	0	1	0
NIST	446	1	446	1	446
NRC	233	1	233	1	233
NSF	0	1	0	1	0
SBA	827	1	827	1	827
SSA	115	1	115	1	115
STATE	0	1	0	1	0
TREASURY	478	1	478	1	478
USAID	304	1	304	1	304
USDA	9027	1	9027	1	9027
USDOJ	77	1	77	1	77
VA	200	1	200	1	200
Total	41,340	.....	41,340	.....	41,340

Seleda Perryman,

Office of the Secretary, HHS PRA Reports Clearance Officer.

[FR Doc. 2011–3961 Filed 2–22–11; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Determination That a Demonstration Needle Exchange Program Would be Effective in Reducing Drug Abuse and the Risk of Acquired Immune Deficiency Syndrome Infection Among Intravenous Drug Users

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Surgeon General of the United States Public Health Service, VADM Regina Benjamin, M.D., M.B.A., has determined that a demonstration needle exchange program (or more appropriately called syringe services program or SSP) would be effective in reducing drug abuse and the risk of infection with the etiologic agent for acquired immune deficiency syndrome. This determination reflects the scientific evidence supporting the important public health benefit of SSPs, and is necessary to meet the statutory requirement permitting the expenditure of Substance Abuse Prevention and Treatment (SAPT) Block Grant funds for SSPs.

FOR FURTHER INFORMATION CONTACT: Substance Abuse and Mental Health Services Administration (SAMHSA), 1 Choke Cherry Road, Rockville, Maryland, attention John Campbell, 240–276–2891.

SUPPLEMENTARY INFORMATION: The U.S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration administers the SAPT Block Grant authorized in section 1921 of Title XIX, Part B, Subpart II of the Public Health Service (PHS) Act (42 U.S.C. 300x–21). Section 1931(a)(1)(F) of Title XIX, Part B, Subpart II of the PHS Act (42 U.S.C. 300x–31(a)(1)(F)) prohibits the expenditure of SAPT Block Grant funds to "* * * carry out any program prohibited by section 256(b) of the Health Omnibus Programs Extension Act of 1988" (42 U.S.C. 300ee–5). Section 256(b) prohibits the use of "* * * funds provided under this Act or an amendment made by this Act…to provide individuals with hypodermic needles or syringes * * * unless the Surgeon General of the Public Health Service determines that a demonstration needle exchange program would be effective in reducing drug abuse and the risk that the public will become infected with the etiologic agent for acquired immune deficiency syndrome."

SSPs are widely considered to be an effective way of reducing HIV transmission among individuals who inject illicit drugs and there is ample evidence that SSPs also promote entry and retention into treatment (Hagan, McGough, Thiede, et al., 2000, Journal of Substance Abuse Treatment, 19, 247–252). According to research that tracks individuals in treatment over extended periods of time, most people who get into and remain in treatment can reduce or stop using illegal or dangerous drugs. In addition to promoting entry to treatment, there are studies that document injection reductions for drug users who participate in SSPs. Hagan, *et al.,* found that, not only were new SSP participants five times more likely to enter drug treatment than non-SSP participants, former SSP participants were more likely to report significant reduction in injection, to stop injecting altogether, and to remain in drug treatment. A summary of the research on SSPs is available at *http://www.samhsa.gov/ssp.*

The Surgeon General of the United States Public Health Service has therefore determined that a demonstration syringe services program would be effective in reducing drug abuse and the risk that the public will become infected with the etiologic agent for acquired immune deficiency syndrome. The Department of Health and Human Services plans to issue guidelines regarding implementation requirements for SSPs based on this determination.

Dated: February 17, 2011.

Kathleen Sebelius,

Secretary.

[FR Doc. 2011–3990 Filed 2–18–11; 4:15 pm]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders K.

Date: March 10–11, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Shanta Rajaram, PhD, Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892. 301–435–6033. *rajarams@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: February 16, 2011.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4014 Filed 2–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, PSI Biology Meeting.

Date: March 11, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3AN12B, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Margaret J. Weidman, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18B, Bethesda, MD 20892, 301–594–3663, *weidmanma@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 15, 2011.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4015 Filed 2–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Research Centers in Trauma, Burn and Perioperative Injury.

Date: March 17, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3AN12B, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Brian R. Pike, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892, 301–594–3907, *pikbr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 15, 2011.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4016 Filed 2–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Chronic Pelvic Pain Clinical Study.

Date: March 28, 2011.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Paul A. Rushing, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Ulcerative Colitis Clinical Trials.

Date: March 29, 2011.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications,

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Paul A. Rushing, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Urology Clinical Trials.

Date: March 30, 2011.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications,

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Paul A. Rushing, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Hemoglobinopathies Program Projects.

Date: April 7, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Paul A. Rushing, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 16, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4018 Filed 2–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March 2, 2011, 8 a.m. to March 3, 2011, 5 p.m., National Institutes of Health, 6701

Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on January 28, 2011, 76 FR 5182–5183.

The meeting title has been changed to "PAR: Collaboration with NCBCs". The meeting is closed to the public.

Dated: February 16, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4039 Filed 2–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Neural Development and Genetics of Zebrafish.

Date: February 25, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call.)

Contact Person: Phillip F. Wiethorn, Scientific Review Officer, DHHS/NIH/NINDS/DER/SRB, 6001 Executive Boulevard; MSC 9529, Neuroscience Center; Room 3203, Bethesda, MD 20892–9529. 301–496–5388. *Wiethorp@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Specials Review Panel.

Date: March 24, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call.)

Contact Person: William C. Benzing, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3204, MSC 9529, Bethesda, MD 20892. 301–496–0660. *Benzingw@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: February 16, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4035 Filed 2–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NIEHS.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Environmental Health Sciences, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIEHS.

Date: March 20–22, 2011.

Closed: March 20, 2011, 7 p.m. to 10 p.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27713.

Open: March 21, 2011, 8:30 a.m. to 11:50 a.m.

Agenda: An overview of the organization and research in the Laboratory of Molecular Carcinogenesis.

Place: Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27713.

Closed: March 21, 2011, 11:50 a.m. to 12:35 p.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27713.

Open: March 21, 2011, 1:30 p.m. to 3:10 p.m.

Agenda: An overview of the organization and research in the Laboratory of Molecular Carcinogenesis.

Place: Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27713.

Closed: March 21, 2011, 3:10 p.m. to 3:40 p.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27713.

Open: March 21, 2011, 3:40 p.m. to 5:30 p.m.

Agenda: Scientific Presentations.

Place: Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27713.

Closed: March 21, 2011, 5:30 p.m. to 10 p.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27713.

Open: March 22, 2011, 8 a.m. to 10:30 a.m.

Agenda: An overview of the organization and research in the Laboratory of Molecular Carcinogenesis.

Place: Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27713.

Closed: March 22, 2011, 10:30 a.m. to Adjournment.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27713.

Contact Person: William T Schrader, PhD, Deputy Scientific Director, Office of the Scientific Director, National Institute of Environmental Health Sciences, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709. (919) 541–3433. *schrader@niehs.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and

Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: February 16, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4033 Filed 2–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel, NEI Clinical Applications I.

Date: March 10, 2011.

Time: 10:30 a.m. to 12 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Eye Institute, 5635 Fishers Lane, Rockville, MD 20852. (Telephone Conference Call.)

Contact Person: Anne E Schaffner, PhD, Chief, Scientific Review Branch, Division of Extramural Research, National Eye Institute, National Institutes of Health, 5635 Fishers Lane, Suite 1300, MSC 9300, 301–451–2020. *aes@nei.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: February 16, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4028 Filed 2–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDCD.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Deafness and Other Communication Disorders, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDCD.

Date: March 24, 2011.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 5 Research Court, Rockville, MD 20852. (Telephone Conference Call.)

Contact Person: Andrew J. Griffith, PhD, MD, Director, Division of Intramural Research, National Institute on Deafness and Other Communication Disorders, 5 Research Court, Room 1A13, Rockville, MD 20850. 301–496–1960. *griffita@nidcd.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: February 16, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4026 Filed 2–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Disorders in Brain, Metabolism and Aging.

Date: March 4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting.)

Contact Person: Pat Manos, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892. 301–408–9866. *manospa@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Fellowship: Chemical and Bioanalytical Sciences.

Date: March 10, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Sergei Ruvinov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892. 301–435–1180. *ruvinser@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowship: Oncological Sciences.

Date: March 23–24, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Michael A Marino, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7892, Bethesda, MD 20892. (301) 435–0601. *marinomi@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 16, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4023 Filed 2–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, NIDDK SEP.

Date: March 10, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Xiaodu Guo, MD, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, PAR09–247 Ancillary Clinical Studies of Interest to the NIDDK: Gastroparesis.

Date: March 16, 2011.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ann A Jerkins, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 759, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–2242, *jerkinsa@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Nutrition and Metabolism Program Project.

Date: March 23, 2011.

Time: 12:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *ls38z@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 16, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4020 Filed 2–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Genetic and Metabolic Fingerprints of Coactivators.

Date: March 23, 2011.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Thomas A. Tatham, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–3993. *tathamt@mail.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Biomarkers of Liver Regeneration.

Date: March 24, 2011.

Time: 4 p.m. to 5:45 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–7637. *davila-bloomm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, DDK–C Conflicts.

Date: April 5, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Thomas A. Tatham, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–3993. *tathamt@mail.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Program Project on Liver Ischemia.

Date: April 7, 2011.

Time: 1 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–7637. *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 16, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4019 Filed 2–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group, Minority Programs Review Subcommittee B.

Date: March 10, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3AN18, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Rebecca H. Johnson, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18C, Bethesda, MD 20892, 301–594–2771, *johnsonrh@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 15, 2011.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4017 Filed 2–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3316–EM; Docket ID FEMA–2011–0001]

Oklahoma; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Oklahoma (FEMA–3316–EM), dated February 2, 2011, and related determinations.

DATES: *Effective Date:* February 5, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective February 5, 2011.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–4049 Filed 2–22–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1955–DR; Docket ID FEMA–2011–0001]

Utah; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Utah (FEMA–1955–DR), dated February 11, 2011, and related determinations.

DATES: *Effective Date:* February 11, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 11, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Utah resulting from severe winter storms and flooding during the period of December 20–24, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Utah.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for debris removal and emergency protective measures under the Public Assistance program in the designated areas. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. Additional forms of assistance may be added after the State has adopted an approved Standard State Mitigation Plan.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, William J. Doran III, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Utah have been designated as adversely affected by this major disaster:

Kane and Washington Counties for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used

for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–4047 Filed 2–22–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1954–DR; Docket ID FEMA–2011–0001]

New Jersey; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Jersey (FEMA–1954–DR), dated February 4, 2011, and related determinations.

DATES: *Effective Date:* February 11, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New Jersey is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of February 4, 2011.

Atlantic and Cumberland Counties for Public Assistance.

Atlantic and Cumberland Counties for emergency protective measures (Category B), including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–4050 Filed 2–22–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5487–N–03]

Notice of Proposed Information Collection for Public Comment Public Housing Assessment System Appeals, Technical Reviews and Database Adjustments

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 25, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Colette Pollard, Department Reports Management Officer, Office of the Chief Information Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 4160, Washington, DC 20410–5000; telephone 202.402.3400, (this is not a toll-free number) or e-mail Ms. *Colette_Pollard@hud.gov.* Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 Seventh Street, SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone: 202–402–4109. (This is not a toll-free number)

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the revised collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public Housing Assessment System Appeals, Technical Reviews and Database Adjustments.

OMB Control Number: 2577–0257.

1. *Description of the Need for the Information and Proposed Use:* Section 502 of the National Affordable Housing Act of 1990, as amended by the Quality Housing and Work Responsibility Act of 1998 (QHWRA), implements section 6(j) of the United States Housing Act of 1937 (the Act). Section 6(j) establishes specific assessment indicators and directs the Secretary to develop additional indicators to assess the management performance of public housing agencies (PHAs) in all major areas of management operations. The four Public Housing Assessment System (PHAS) indicators under the new proposed PHAS rule are: Physical condition; financial condition; management operations; and Capital Fund Program. A PHA is designated as troubled if it fails to perform under the assessment indicators, or if it is unable to administer the program for assistance from the Capital Fund Program.

Pursuant to § 6(j)(2)(A)(iii) of the Act, HUD is required to establish procedures

for a PHA to appeal its troubled designation. The proposed PHAS interim rule at § 902.69 provides the opportunity for a PHA to appeal its troubled designation, petition for the removal of troubled designation, or appeal its score.

The proposed PHAS interim rule at § 902.68 affords PHAs the opportunity to request a technical review of its physical condition inspection or, at § 902.24, a database adjustment if certain conditions are present. A technical review of the physical condition inspection may be requested if a PHA believes that an objectively verifiable and material error(s) occurred in the inspection of an individual property. A database adjustment may be requested by a PHA due to facts and circumstances affecting a project which are not reflected in the physical condition inspection or which are reflected inappropriately in the physical condition inspection.

HUD uses the data it collects from program participants (PHAs) to evaluate the four individual PHAS indicators and to determine an overall PHAS score for each PHA, and to determine the physical condition scores for individual projects. The overall PHAS score determines if a PHA's performance is high, standard, substandard or troubled, including Capital Fund Program troubled. PHAs may request an appeal of its overall PHAS score, or a technical review or database adjustment of their physical condition score. These requests are submitted by letter from the PHA to HUD, and the letter includes documentation to justify the request. HUD reviews the request and accompanying documentation, and makes a determination as to whether to grant or deny the request based on what the PHA has submitted. These information collections are described in the proposed PHAS interim rule, with thorough definitions of each request. The granting of an appeal, technical review or database adjustment may change a PHA's designation, usually to a higher level.

Agency form numbers: None.

Members of affected public: Public housing agencies.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: 1,700 respondents annually with 1 response per respondent. Average time per response for each form is 5.2 hours and total annual burden hours is 8,840.

Status of the proposed information collection: Revision of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 22, 2010.

Merrie Nichols-Dixon,

Acting Deputy, Assistant Secretary for Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2011–4030 Filed 2–22–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–13]

Notice of Proposed Information Collection: Comment Request; "eLogic Model" Grant Performance Report Standard

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of Proposed Information Collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 25, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number {2535–0114} and should be sent to: Barbara Dorf, Director, Office of Departmental Grants Management and Oversight, Department or Housing and Urban Development, 451 7th Street, SW., Room 3156, Washington, DC 20410 or e-mail at *Barbara.Dorf@hud.gov*.

FOR FURTHER INFORMATION CONTACT: Collette Pollard, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Collete.Pollard@HUD.gov*; or Dorthera Yorkshire, Senior Program Analyst Office of Departmental Grants Management and Oversight at *Dorthera.Yorkshire@hud.gov* for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: "eLogic Model" Grant Performance Report Standard".

OMB Approval Number: 2535–0114.

Form Number: The agency form number is HUD 96010, each program utilizing the Logic Model will have the same form number and the Program Name following the number to associate the logic model to the specific program.

Description of the need for the information and proposed use: The revised form, which is an attachment to HUD Federal Financial Assistance applications. HUD uses standardized points for evaluating Logic Models submitted under Rating Factor 5, Achieving Results and Program Evaluation for programs using the Logic Model. The decision to standardize the basis for rating the Logic Model resulted from review of submitted Logic Models and rating factor narrative statements, and training sessions held with HUD staff and the applicant community. By standardizing the rating for the Logic Model submission, HUD believes that a greater understanding will be gained on the use and relationship of the Logic Model to information submitted as part of the Rating Factors for award. The standardization of the Logic Model submission in Rating Factor 5 highlights the relationship between the narratives produced in response to the factors for award, stated outputs and outcomes, and discrepancies or gaps that have been found to exist in submitted Logic Models. HUD also believes that the standardization will strengthen the use of the Logic Model as a management and evaluation tool. The Logic Model is a tool that integrates program operations and program accountability. It links program operations (mission, need, intervention, projected results, and actual results), and program accountability (measurement tool, data

source, and frequency of data collection and reporting, including personnel assigned to function). Applicants/grantees should use it to support program planning, monitoring, evaluation, and other management function HUD uses the Logic Model and its electronic version, the eLogic Model®, to capture an executive summary of the application submission in data format, which HUD uses to evaluate the attainment of stated applicant goals and anticipated results. HUD also uses the data for policy formulation. HUD encourages applicants and those selected for award to use the Logic Model data to monitor and evaluate their own progress and effectiveness in meeting stated goals and achieving results consistent with the program purpose. To further this objective, and in response to grantee requests, the HUD eLogic Model® contains a column that allows the grantee to input results achieved for the reporting period, as well as Year-To-Date (YTD) in the reporting year tab for each year of the award. This added field allows the grantee to review performance each reporting period and for each year of the award "at a glance," and without having to construct a report. The HUD eLogic Model® also has fields to capture the location (city, state, and nine digit Zip Code) where the majority of the activities take place, as well as a drop-down menu to identify the reporting period start and end date. In FY2010, HUD added a drop down field for the reporting period, as follows: Yr1Qtr1; Yr1Qtr2; Yr1Qtr3; Yr1Qtr4; Yr2Qtr5; Yr2Qtr6; Yr2Qtr7; Yr2Qtr8; Yr3Qtr9; Yr3Qtr10; Yr3Qtr11; Yr3Qtr12; and Final Report. The sequential numbering of the quarters was determined necessary because each start and end date within a program may vary by grantee, so it was difficult to determine the actual report that was sent in the order that they were received by HUD. If a grantee only reports semi annually, it would select Yr1 Quarter 2 as its first reporting period and Yr1 Quarter 4 as its second semi-annual reporting period. If a grantee is only required to report annually, it would select Yr1Qtr4 to denote its reporting period. Final reports would be denoted as a final report. Each Program NOFA will specify the reporting requirement with instructions, and whether a separate final report is required in addition to any annual report. Applicants and grantees must follow the following requirements in completing and naming their Logic Model files:

The applicant name in the Logic Model must match the applicant name in box 8a of the SF424, Application for Federal Financial Assistance Form. If an applicant is submitting more than one application for funding, the project name must be completed and must be different for each funding request made.

DO NOT use special characters (i.e., #, %, /, etc.) in a file name.

DO NOT include spaces in the file name. Limit file names to not more than 50 characters (HUD strongly recommends not more than 32 characters).

DO NOT convert Word files or Excel files into PDF format. Converting to PDF format increases file size and will make it more difficult to upload the application and does not allow HUD to enter data from the Excel files into a database.

DO NOT save your logic model in .xlsm format. If necessary save as an Excel 97–2003 .xls format. Using the .xlsm format can result in a Grants.gov virus detect error. In addition, HUD cannot accept and open .xlsm files.

File names with spaces and special characters in the file name or which contain more than 50 characters present problems for HUD entering the data electronically into our database. Applications that do not follow the naming conventions will have their applications rejected by the Grants.gov website, as the file names that violate these requirements are viewed as containing viruses by the system. Grantees who submit reports that do not meet the file-naming requirements or do not complete mandatory data fields will have their Logic Model reports returned to them for correction of these issues.

For the file name of the eLogic Model®, please follow the file naming conventions and requirements above. After award, the file name for Logic Model must be the award number and reporting period. For detailed instructions, please see the instructions under Tab 1 of the program eLogic Model®, form HUD96010. The reporting periods will be specified in each of the program NOFAs.

HUD's goal is to improve the labeling of the files to improve matching submitted application logic models and report Logic Models, thereby improving HUD's ability to place the information in a database and measure the effectiveness of HUD programs.

Factor 5, Achieving Results and Program Evaluation, will consist of a minimum of 10 points for the Logic Model submission. The matrix provided in Appendix B of this General Section identifies how the Logic Model will be rated in a standardized way across program areas using the Logic Model. Training on the rating factor will be provided via satellite broadcast and archived on HUD's website for repeat viewing. Individual Program NOFAs may specify means other than the Logic Model for capturing performance data for evaluation purposes. Applicants should carefully read the Program NOFA to determine requirements and the Factors for Award which constitutes the basis for scoring each program NOFA.

Additional details about the five rating factors and the maximum points for each factor are provided in individual program NOFAs. For a specific funding opportunity, HUD may modify these factors to take into account explicit program needs or statutory or regulatory limitations. Applicants should carefully read the factors for award as described in the program NOFA to which they are responding.

e. Additional Criteria: Past Performance. In evaluating applications for funding, HUD will take into account an applicant's past performance in managing funds, including, but not limited to, the ability to account for funds appropriately; timely use of funds received either from HUD or other Federal, State, or local programs; timely submission and quality of reports to HUD; meeting program requirements; meeting performance targets as established in Logic Models approved as part of the grant agreement; timelines for completion of activities and receipt of promised matching or leveraged funds; and the number of persons to be served or targeted for assistance. HUD may consider information available from HUD's records; the name check review; public sources such as newspapers; Inspector General or Government Accountability Office reports or findings; or hotline or other complaints that have been proven to have merit.

In evaluating past performance, HUD may elect to deduct points from the rating score or establish threshold levels as specified under the Factors for Award in the individual program NOFAs. Each program NOFA will specify how past performance will be rated.

Agency form numbers, if applicable: HUD–96010.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: An estimation of the total time needed to complete the form is less than ten minutes; number of respondents is 11,000; frequency of response is on the occasion of application submission. The total report burden is 1100 hours.

Status of the proposed information collection: New collection of information for HUD's discretionary programs.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 16, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–4032 Filed 2–22–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5094–N–04]

Changes to the Public Housing Assessment System (PHAS): Financial Condition Scoring Notice

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice provides additional information to public housing agencies (PHAs) and members of the public about HUD's process for issuing scores under the financial condition indicator of the Public Housing Assessment System (PHAS). This notice includes threshold values and associated scores for each financial subindicator derived from generally accepted accounting principles (GAAP)-based financial information. This notice updates and clarifies the audit flags and tier classification chart.

DATES: *Effective Date:* March 25, 2011.

Comment Due Date: April 25, 2011.

ADDRESSES: Interested persons are invited to submit comments on this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service, toll-free, at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Claudia Yarus, Department of Housing and Urban Development, Office of Public and Indian Housing, Real Estate Assessment Center (REAC), 550 12th Street, SW., Suite 100, Washington, DC 20410 at 202–475–8830 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339. Additional information is available from the REAC Internet site at *http://www.hud.gov/offices/reac/.*

SUPPLEMENTARY INFORMATION:

I. Purpose of This Notice

The purpose of this notice is to provide information about the scoring process for PHAS indicator #2, financial condition, under the PHAS. The purpose of the financial condition indicator is to measure the financial condition of each public housing project.

II. Background

A. Financial Condition Indicator Regulatory Background

To reflect a shift from a PHA-wide based assessment to one that is property based, HUD is revising the Financial Assessment Sub-System for public housing (FASS–PH) Financial Data Schedule (FDS) and financial condition scoring process. Project-based management is defined in 24 CFR 990.115 as "the provision of property management services that is tailored to the unique needs of each property." PHAs must also implement project-based budgeting and project-based accounting, which are essential components of asset management. Project-based accounting is critical to a property-based assessment of financial condition, because it mandates the submission of property-level financial data. Accordingly, PHAs will now be scored at a property level, using the already designated projects as the basis for assessment.

HUD will assess the financial condition of projects. Project financial performance will be scored and averaged across the PHA, weighted according to unit count. The projects within a PHA will be evaluated and scored based on the project's performance relative to industry standards.

B. Comparable Scoring Systems

The financial condition subindicators are not unique to public housing. The subindicators included in the financial condition indicator scoring process are common measurements used throughout the multifamily industry to rank properties and identify the properties that require further attention.

III. Transition to Asset Management and Frequency of Financial Condition Submissions

The number of units in a PHA's Low-Rent program and the PHAS designation for small PHAs will determine the frequency of financial condition submissions during and after the transition to asset management. PHAs with fewer than 250 public housing units will receive a PHAS assessment, based on its PHAS designation, as follows:

(1) A small PHA that is a high performer will receive a PHAS assessment every 3 years;

(2) A small PHA that is a standard or substandard performer will receive a PHAS assessment every other year; and

(3) All other small PHAs will receive a PHAS assessment every year, including a PHA that is designated as

troubled or Capital Fund troubled in accordance with § 902.75.

In the baseline year, every PHA will receive an overall PHAS score and in all four of the PHAS indicators: physical condition; financial condition; management operations; and Capital Fund program. This will allow a baseline year for the small deregulated PHAs.

IV. Subindicators

A. Subindicators of the Financial Condition Indicator

There are three subindicators that examine the financial condition of each project. The values of the three subindicators, derived from the FDS submitted by the PHA, comprise the overall financial assessment of a project. The three subindicators of the financial condition indicator are:

- Quick Ratio (QR);
- Months Expendable Net Assets Ratio (MENAR); and
- Debt Service Coverage Ratio (DSCR).

B. Description of the Financial Condition Subindicators

The subindicators are described as follows:

Subindicator #1, QR. This subindicator is a liquidity measure of the project's ability to cover current liabilities. It is measured by dividing adjusted unrestricted current assets by current liabilities. The purpose of this ratio is to indicate whether a project could meet all current liabilities if they became immediately due and payable. A project should have available current resources equal to or greater than its current liabilities in order to be considered financially liquid. The QR is a commonly used liquidity measure across the industry. Maintaining sufficient liquidity is essential for the financial health of an individual project.

Subindicator #2, MENAR. This subindicator measures a project's ability to operate using its net available, unrestricted resources without relying on additional funding. It is computed as the ratio of adjusted net available unrestricted resources to average monthly operating expenses. The result of this calculation shows how many months of operating expenses can be covered with currently available, unrestricted resources.

Subindicator #3, DSCR. This subindicator is a measure of a project's ability to meet regular debt obligations. This subindicator is calculated by dividing adjusted operating income by a project's annual debt service payments. It indicates whether the project has generated enough income from operations to meet annual interest and principal payment on long-term debt service obligations.

V. GAAP-Based Scoring Process and Elements of Scoring

A. Points and Threshold

The financial condition indicator is based on a maximum of 25 points. In order to receive a passing score under this indicator, a project must achieve at least 15 points, or 60 percent of the available points under this indicator.

B. Scoring Elements

The financial condition indicator score provides an assessment of a project's financial condition. Under the PHAS financial condition indicator, HUD will calculate an overall score based on the unit weighted average score for each project. In order to compute an overall financial condition score, an individual project financial condition score is multiplied by the number of units in each project to determine a "weighted value." The sum of the weighted values is then divided by the total number of units in a PHA's portfolio to derive the overall PHAS financial condition indicator score. The three subindicator scores are produced using GAAP-based financial data contained in the FDS. The minimum number of points (zero) and the maximum number of points (25) can be achieved over a range of values.

Subindicators	Measurement of	Points
QR	Liquidity	12.0
MENAR	Adequacy of reserves	11.0
DSCR	Capacity to cover debt	2.0
Total		25.0

QR

A project will receive zero points when its QR is less than 1.0. If its QR equals 1.0, it will receive 7.2 points. If its QR is greater than 1.0 and less than 2.0, it will receive greater than 7.2 points but less than 12.0 points, on a proportional basis. A project will receive the maximum of 12.0 points when its QR is equal to or greater than 2.0.

QR Value	Points
<1.0	0.0
1.0	7.2
>1.0 but <2.0	>7.2 but <12.0
≥2.0	12.0

MENAR

A project will receive zero points when its MENAR is less than 1.0. If its MENAR equals 1.0, it will receive 6.6 points. If its MENAR is greater than 1.0 and less than 4.0, it will receive greater than 6.6 points but less than 11.0 points, on a proportional basis. A project will receive the maximum of 11 points when its MENAR is equal to or greater than 4.0.

MENAR Value	Points
<1.0	0.0
1.0	6.6
>1.0 but <4.0	>6.6 but <11.0
≥4.0	11.0

DSCR

A project will receive zero points when its DSCR ratio is less than 1.0. If its DSCR equals at least 1.0 but less than 1.25, it will receive 1 point. A project will receive the maximum of 2.0 points if its DSCR is equal to or greater than 1.25 or if it has no debt at all.

DSCR Value	Points
<1.0	0.0
≥1.0 but <1.25	1.0
≥1.25	2.0
No Debt Service	2.0

VI. Audit Adjustment

Pursuant to § 902.30, HUD calculates a revised financial condition score after it receives audited financial information. The revised financial condition score, which is based on the audited information, can increase or decrease the initial PHA-wide score that was based on the unaudited financial information. The audited score reflects two types of adjustments. The first type is based on audit flags and reports the result from the audit itself. Significant deficiencies and material weaknesses are considered to be audit flags, alerting the REAC to an internal control

deficiency or an instance of noncompliance with laws and regulations. The second adjustment type addresses significant differences between the unaudited and audited financial information reported to HUD pursuant to § 902.30.

Audit Opinion and Flags

As part of the analysis of the financial health of a PHA, including assessment of the potential or actual waste, fraud, or abuse at a PHA, HUD will look to the Audit Report to provide an additional basis for accepting or adjusting the financial component scores. The information collected from the annual Audit Report pertains to the type of audit opinion; details of the audit opinion; and the presence of significant deficiencies, material weaknesses, and noncompliance.

If the auditor's opinions on the financial statements and major federal programs are anything other than unqualified, points could be deducted from the PHA's audited financial score. The REAC will review audit flags to determine their significance as it directly pertains to the assessment of the PHA's financial condition. If the flags have no effect on the financial components or the overall financial condition of the PHA as it relates to the PHAS assessment, the audited score will not be adjusted. However, if the flags have an impact on the PHA's financial condition, the PHA's audited score will be adjusted according to the seriousness of the reported finding.

These flags are collected on the Data Collection Form (OMB approval number 2535–0107). The PHA completes this form for audited submissions. If the Data Collection Form indicates that the auditor's opinion will be anything other than unqualified, points can be deducted from the financial condition score. The point deductions have been established using a three-tier system. The tiers give consideration to the seriousness of the audit qualification and limit the deducted points to a reasonable portion of the PHA's total score.

Audit Flag Tiers

Audit flags are assigned tiers, as stated in the following chart.

AUDIT FLAGS AND TIER CLASSIFICATIONS

Audit Flags	Tier classification	comments
Financial Statement Audit Opinion(s):		
1. Unqualified opinion(s)	None.	
2. Qualified opinion(s)	Tier 2	Deduction only if the departure includes the Low Rent or Capital Fund programs.
• Departures from GAAP not significant enough to cause an adverse opinion(s).		
• Limitations on the scope of the audit (regardless of cause) not significant enough to cause a disclaimer of opinion.		
3. Adverse opinion(s) regardless of reason(s)	Tier 1.	
4. Disclaimer of opinion(s) regardless of reason(s)	Tier 1.	
Opinion(s) on Supplemental Information (Statement of Auditing Standard (SAS) 29 "in relation to" type of opinion):		Applies to the FDS.
1. Fairly stated	None.	
2. Fairly stated except for	Tier 2.	
3. No opinion	Tier 1.	
4. Incomplete or missing	Tier 1.	
Report on Internal Control and Compliance and Other Matters Noted in an Audit of the Financial Statement performed in accordance with Government Auditing Standards (GAS) (Yellow Book):		Deduction applies only if the internal control deficiency and/or noncompliance relates to the Low Rent or Capital Fund programs.
1. Control deficiencies	Tier 3.	
• Significant deficiencies.		
• Material weakness.		
2. Material noncompliance	Tier 3.	
3. Fraud	Tier 3.	
4. Illegal acts	Tier 3.	
5. Abuse	Tier 3.	
Report on Compliance with Requirements Applicable to Major Federal Programs and Internal Control over Compliance with OMB Circular A–133—*Opinion on compliance with each major Federal program requirements:*		
1. Unqualified opinion(s) on compliance with Low Rent program and Capital Fund program major federal requirements.	None.	
2. Qualified opinion(s) on compliance with Low Rent Program program and Capital Fund program major federal requirements (regardless of cause).	Tier 2.	
3. Adverse opinion(s) on compliance with Low Rent program and Capital Fund program major federal requirements (regardless of cause).	Tier 1.	
4. Disclaimer of opinion(s) on compliance with Low Rent Program and Capital Fund program major federal requirements (regardless of cause).	Tier 1.	
Internal Controls and Compliance:		
1. Control Deficiencies:	Tier 3.	
• Significant deficiencies in internal controls over compliance with Low Rent program and Capital Fund program requirements.		

AUDIT FLAGS AND TIER CLASSIFICATIONS—Continued

Audit Flags	Tier classification	comments
• Material weakness in internal controls over compliance with Low Rent program and Capital Fund program requirements.		
2. Material noncompliance with Low Rent program and Capital Fund program requirements.	Tier 3.	
Other Consideration:		
1. Significant change penalty deduction applies only if the significant change(s) relate to the Low Rent or Capital Fund programs.	Tier 2.	
2. Going concern	Tier 1.	
3. Management Discussion and Analysis and other supplemental information omitted	Tier 2.	
4. Financial statements using basis other than GAAP	Tier 1.	

Each tier assesses point deductions of varying severity. The following chart illustrates the point schedule:

Tier	PHAS points deducted
Tier 1	Any Tier 1 finding assesses a 100 percent deduction of the PHA's financial condition indicator score.
Tier 2	Any Tier 2 finding assesses a point deduction equal to 10 percent of the unadjusted financial condition indicator score.
Tier 3	Each Tier 3 finding assesses a 0.5 point deduction per occurrence, to a maximum of 4 points of the financial condition indicator score.

Review of Audited Versus Unaudited Submission

The purposes of comparing the ratios and scores from the unaudited FDS submission to the ratios and scores from the audited submission are to:

• Identify significant changes in ratio calculation results and/or scores from the unaudited submission to the audited submission;

• Identify PHAs that consistently provide significantly different data from their unaudited submission in their audited submission; and

• Assess or alleviate penalties associated with the inability to provide reasonably accurate unaudited data within the required time frame.

This review process will be performed only for the audited submissions.

Significant Change Penalty

HUD views the transmission of significantly inaccurate unaudited financial data as a serious condition. Therefore, projects are encouraged to assure that financial data is as reliable as possible for their unaudited submissions.

A significant change penalty will be assessed for significant differences between the unaudited and audited submissions. A significant difference is considered to be an overall financial condition score decrease of three or more points from the unaudited to the audited submission. A significant change penalty is considered a tier 2 flag and will result in a reduction of 10 percent of the total audited financial condition score.

The PHAS system automatically deducts the significant change penalty from the audited score, and this reduction triggers the REAC analyst's review. REAC may waive the significant change penalty if the project provides reasonable documentation of the significant difference in its submission.

Dated: *February 1, 2011.*

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2011–2656 Filed 2–22–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5094–N–05]

Changes to the Public Housing Assessment System (PHAS): Management Operations Scoring Notice

SUMMARY: This notice provides additional information to public housing agencies (PHAs) and members of the public about HUD's process for issuing scores under the management operations indicator of the Public Housing Assessment System (PHAS).

DATES: *Effective Date:* March 25, 2011.

Comment Due Date: April 25, 2011.

ADDRESSES: Interested persons are invited to submit comments on this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the

instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service, toll-free, at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Claudia Yarus, Department of Housing and Urban Development, Office of Public and Indian Housing, Real Estate Assessment Center (REAC), 550 12th Street, SW., Suite 100, Washington, DC 20410 at 202–475–8830 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339. Additional information is available from the REAC Internet site at *http://www.hud.gov/offices/reac/.*

SUPPLEMENTARY INFORMATION:

I. Purpose of This Notice

The purpose of this notice is to provide additional information about the scoring process for the PHAS management operations indicator. The purpose of the management operations indicator is to assess the project's and PHA's management operations capabilities. All projects will be assessed under the management operations indicator, even if a PHA has not converted to asset management.

This PHAS Management Operations Scoring Notice has been revised to reflect research HUD conducted through informal meetings with representatives of PHAs, residents, projects, and public housing industry groups, and to provide the basis for scoring projects on the management operations.

II. Transition to Asset Management and Frequency of Management Operations Assessments

The number of units in a PHA's Low-Rent program and the PHAS designation for small PHAs will determine the frequency of management operations assessments during and after the transition to asset management. PHAs with less than 250 public housing units will receive a PHAS assessment, based on its PHAS designation, as follows:

(1) A small PHA that is a high performer will receive a PHAS assessment every 3 years;

(2) A small PHA that is a standard or substandard performer will receive a PHAS assessment every other year; and

(3) All other small PHAs will receive a PHAS assessment every year, including a PHA that is designated as troubled or Capital Fund troubled in accordance with § 902.75.

In baseline year, every PHA will receive an overall PHAS score and in all four of the PHAS indicators: physical condition; financial condition; management operations; and Capital Fund program. This will allow a baseline year for the small deregulated PHAs.

III. Subindicators

A. Subindicators of the Management Operations Indicator. The three subindicators of the management operations indicator are:

- Occupancy;
- Tenant accounts receivable; and
- Accounts payable.

B. Points for the Management Operations Indicator. This indicator assesses the management operations of projects and PHAs. The management operations indicator score is based on a maximum of 25 points.

Subindicator #1, Occupancy. This subindicator measures the occupancy for the project's fiscal year, adjusted for allowable vacancies pursuant to 24 CFR 990.145.

A PHA will achieve 16 points if it has an adjusted occupancy rate equal to or greater than 98 percent. It will receive 12 points if it has an adjusted occupancy rate of less than 98 percent but equal to or greater than 96 percent. It will receive 8 points if it has an adjusted occupancy rate of less than 96 percent but equal to or greater than 94 percent. It will receive 4 points if it has an adjusted occupancy rate of less than 94 percent but equal to or greater than 92 percent. It will receive 1 point if it has an adjusted occupancy rate of less than 92 percent but equal to or greater than 90 percent. It will receive 0 points if it has an adjusted occupancy rate of less than 90 percent.

Occupancy value	Points
≥98%	16
<98% but ≥96%	12
<96% but ≥94%	8
<94% but ≥92%	4
<92% but ≥90%	1
<90%	0

Subindicator #2, Tenant accounts receivable. This subindicator measures the tenant accounts receivable of a project against the tenant charges for the project's fiscal year. Charges include rents and other charges to tenants, such as court costs, maintenance costs, etc.

A PHA will receive 5 points if it has a tenant accounts receivable ratio of less than 1.5. It will receive 2 points if it has a tenant accounts receivable ratio of equal to or greater than 1.5 and less than 2.5. It will receive zero points if it has a tenant accounts receivable ratio of equal to or greater than 2.5.

Tenant accounts receivable value	Points
<1.5	5
≥1.5 but <2.5	2
≥2.5	0

Subindicator #3, Accounts payable. This subindicator measures the money that a project owes to vendors at the end of the project's fiscal year for products and services purchased on credit against total operating expenses.

A PHA will receive 4 points if it has an accounts payable ratio of less than 0.75. It will receive 2 points if it has an accounts payable ratio of equal to or greater than 0.75 but less than 1.5. It will receive zero points if it has an accounts payable ratio of equal to or greater than 1.5.

Accounts payable value	Points
<0.75	4
≥0.75 but <1.5	2
≥1.5	0

IV. Elements of Scoring

A. Points and Threshold

The management operations indicator score is based on a maximum of 25 points. In order to receive a passing score under this indicator, a project must achieve at least 15 points or 60 percent of the available points available under this indicator.

B. Scoring Elements

The management operations indicator score provides an assessment of a project's management effectiveness. Under the PHAS management operations indicator, HUD will calculate a score for each project, as well as for the overall management operations of a

PHA, that reflects weights based on the relative importance of the individual management subindicators. The overall management operations indicator score for a PHA is a unit-weighted average of the PHA's individual project management operations scores. In order to compute the score, an individual project management operations score is multiplied by the number of units in each project to determine a "weighted value." The sum of the weighted values is then divided by the total number of units in a PHA's portfolio to derive the overall PHAS management operations indicator score.

The computation of the score under this PHAS indicator utilizes data obtained from the Financial Data Schedule and requires three main calculations for the subindicators, which are:

- Scores are calculated for each subindicator;
- A management operations score is calculated for each project; and
- A score is calculated for the overall indicator score, which is a unit-weighted average of the individual project management operations scores.

The point values of the subindicators are listed in Table 1.

TABLE 1—MANAGEMENT OPERATIONS SUBINDICATORS

Subindicator	Point value
Occupancy	16
Tenant Accounts Receivable	5
Accounts Payable	4
Total Points	25

C. Example of Score Computations

The indicator score for each project equals the sum of the subindicator scores, as shown in Table 2.

TABLE 2—EXAMPLE OF PROJECT SCORE

Subindicator	Points
Occupancy	16
Tenant Accounts Receivable	2
Accounts Payable	4
Total Points	22

D. Physical Condition and/or Neighborhood Environment

The overall management operations score for a project will be adjusted upward to the extent that negative conditions are caused by situations outside the control of the project. These situations are related to the poor physical condition of the project or the overall depressed condition of the major census tract in which a project is located. The intent of this adjustment is to avoid penalizing projects through appropriate application of the adjustment. In addition, the overall PHA Management Operations Indicator score will be adjusted upward to reflect the individual project adjustments.

Definitions and application of physical condition and/or neighborhood environment factors are:

(1) A physical condition adjustment applicable to projects at least 28 years old, based on the unit-weighted average Date of Full Availability (DOFA) date.

(2) A neighborhood environment adjustment applicable to projects in census tracts in which at least 40 percent of the families have an income below the poverty rate, as documented by the most recent census data. If a project is in more than one census tract, the census data for the census tract where the majority of units are located shall be used. If there is no census tract data available for a project, the census data for that project will be based on the county's census data, and if county data is not available, then the state census data will be used.

- Adjustment for physical condition and/or neighborhood environment. HUD will adjust the overall management operations score of a project subject to one or both of the physical condition and/or neighborhood environment conditions. The adjustments will be made to the individual project scores, and then to the overall management operations score, so as to reflect the difficulty in managing the projects.

The adjustment for physical condition and/or neighborhood environment will be calculated by HUD and applied to all eligible projects. The data to determine if a project is eligible for either adjustment will be derived from the Public and Indian Housing Information Center databases.

In each instance where the actual management operations score for a project is rated below the maximum score of 25 points, one unit-weighted point each will be added for physical condition and/or neighborhood environment, but not to exceed the maximum number of 25 points available for the management operations indicator for a project. Table 3 shows an example of the calculation of physical condition and/or neighborhood environment points for a hypothetical PHA with four projects. The adjustment for physical condition and/or neighborhood environment is a unit-weighted average of a PHA's individual project physical condition and/or neighborhood environment adjustments.

TABLE 3—CALCULATION OF PHYSICAL CONDITION AND/OR NEIGHBORHOOD ENVIRONMENT (PCNE) POINTS

Line	Project	Proj. #1	Proj. #2	Proj. #3	Proj. #4	Total PHA
1	Units	133	65	89	25	312
2	Weight	42.6%	20.8%	28.5%	8.0%	100.0%
3	Physical Condition Points	1	1	1	0	
4	Neighborhood Environment Points	1	1	0	0	
5	Total PCNE Points at Project Level	2	2	1	0	
6	Weighted Physical Condition Points	0.43	0.21	0.29	0.00	0.92
7	Weighted Neighborhood Environment Points	0.43	0.21	0.00	0.00	0.63
8	Weighted PCNE Points	0.85	0.42	0.29	0.00	1.55

This PHA has 312 total units in four projects (*see* line 1). The weight of each project is based on units and is calculated by dividing the project units into the total PHA units (*see* line 2). Project #1 and project #2 qualify for both points; project #3 qualifies for only physical condition; and project #4 does not qualify for any points (*see* lines 3 through 5). Each project contributes its physical condition and/or neighborhood environment points to the overall PHA management operations indicator score based on its weight. For example, in project #1, the weighted physical condition and neighborhood environment point is 0.85 and is calculated by multiplying the project

weight of 42.6 percent (line 2) by the physical condition and neighborhood environment point of 2 (*see* line 5). The overall physical condition and neighborhood environment adjustment at the PHA level is calculated at 1.55 points by adding the individual project weighted scores (*see* line 8 under the Total PHA column).

Dated: February 1, 2011.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2011–2658 Filed 2–22–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5094–N–06]

Changes to the Public Housing Assessment System (PHAS): Capital Fund Scoring Notice

SUMMARY: This notice provides additional information to public housing agencies (PHAs) and members of the public about HUD's process for issuing scores under the Capital Fund program indicator of the Public Housing Assessment System (PHAS).

DATES: *Effective Date:* March 25, 2011.

Comment Due Date: April 25, 2011.

ADDRESSES: Interested persons are invited to submit comments on this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service, toll-free, at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Claudia Yarus, Department of Housing and Urban Development, Office of Public and Indian Housing, Real Estate Assessment Center (REAC), 550 12th Street, SW., Suite 100, Washington, DC 20410 at 202–475–8830 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339. Additional information is available from the REAC Internet site at *http://www.hud.gov/offices/reac/.*

SUPPLEMENTARY INFORMATION:

I. Purpose of This Notice

The purpose of this notice is to provide information about the scoring process for PHAS indicator #4, Capital Fund program. The purpose of the Capital Fund program assessment is to examine the period of time it takes a PHA to obligate the funds provided to a PHA from the Capital Fund program under section 9(j) of the 1937 Act (42 U.S.C. 1437g(9)(j)), and to occupy units. Funds from the Capital Fund program under section 9(d) of the 1937 Act (42 U.S.C. 1437g(d)(2)) do not include HOPE VI program funds.

This indicator is not applicable for PHAs that choose not to participate in the Capital Fund program under section 9(d) of the 1937 Act. This indicator is applicable on a PHA-wide basis, and not to individual projects. The Capital Fund program indicator is based on a maximum of 10 points.

The assessment required under the PHAS Capital Fund program indicator will be performed through analysis of: (1) Obligated amounts in HUD's electronic Line of Credit Control System (eLOCCS) (or its successor) for all Capital Fund program grants that were open during a PHA's assessed fiscal year; and (2) the PHA's occupancy rate as measured at the end of the PHA's fiscal year, which is calculated by dividing the total occupied assisted, special use, and non-assisted units by the total ACC units less the total uninhabitable units as reflected in the Inventory Management System/Public Housing Information Center (PIC) (or its successor). Of the total 100 points available for a PHAS score, a PHA may receive up to 10 points based on the Capital Fund program indicator. Scoring for this indicator will be dependent on the amount of time it takes a PHA to obligate its Capital Fund grant(s), as well as the PHA's occupancy rate. If a PHA has no obligation end dates in the assessed fiscal year, and does not have any § 9(j) of the 1937 Act sanctions against it, the points for that subindicator will be redistributed to the remaining subindicator.

II. Transition to Asset Management and Frequency of Capital Fund Program Assessments

The number of units in a PHA's Low-Rent program and the PHAS designation for small PHAs will determine the frequency of Capital Fund program assessments during and after the transition to asset management. PHAs with less than 250 public housing units will receive a PHAS assessment, based on its PHAS designation, as follows:

(1) A small PHA that is a high performer will receive a PHAS assessment every 3 years;

(2) A small PHA that is a standard or substandard performer will receive a PHAS assessment every other year; and

(3) All other small PHAs will receive a PHAS assessment every year, including a PHA that is designated as troubled or Capital Fund troubled in accordance with § 902.75.

In the baseline year, every PHA will receive an overall PHAS score and in all four of the PHAS indicators: physical condition; financial condition; management operations; and Capital Fund program. This will allow a baseline year for the small deregulated PHAs.

III. Subindicators

A. Subindicators of Capital Fund Program Indicator. The two subindicators of the Capital Fund program indicator are:

- Timeliness of fund obligation; and
- The PHA's occupancy rate.

B. Points for Capital Fund Program Indicator. This indicator measures the statutory requirements for the Capital Fund program.

Subindicator #1, Timeliness of Fund Obligation. This subindicator examines the period of time it takes for a PHA to obligate funds from the Capital Fund program under section 9(j)(1) of the 1937 Act (42 U.S.C. 1437g(9)(j)). HUD may extend the period of time for the obligation of funds in accordance with 24 CFR 905.120 and section 9(j)(2) of the 1937 Act. Points are awarded on the following bases:

The PHA will earn the full 5 points if it has obligated 90 percent or more of the grant amount for all of its grants on its obligation end date, or on the extended obligation end date, for all open Capital Fund program grants that have obligation end dates during the assessed fiscal year and does not have any grants that have been sanctioned pursuant to § 9(j) of the 1937 Act during the assessed fiscal year.

The PHA will earn 0 points if it has obligated less than 90 percent of the grant amount for any of its open grants on the obligation end date during the assessed fiscal year or is undergoing sanctions as per Section III of this notice.

Obligation value	Points
≥90% and no sanctions	5
<90% or sanctions	0

If the PHA receives 0 points for this subindicator, it is not eligible for points for subindicator # 2.

Subindicator #2, Occupancy rate. This subindicator measures the PHA's occupancy rate as measured at the end of the PHA's fiscal year, which is calculated by dividing the total occupied assisted, HUD approved special use, and non-assisted units by the total ACC units less the total uninhabitable units as reflected in the Inventory Management System/PIC, or its successor. This information will be calculated as of the end of the PHA's fiscal year. A PHA will receive 2 points if it has an adjusted occupancy rate of at least 93 percent but not more than 96 percent. A PHA will receive 5 points if it has an adjusted occupancy rate of 96 percent or more.

Occupancy rate	Points
93%–<96%	2
96%–100%	5

IV. Sanctions

Sanctions for the obligation of funds are in accordance with 24 CFR 905.120. If a PHA has been sanctioned during the assessment period, the PHA will receive 0 points for the timeliness of fund obligation.

V. Elements of Scoring

A. Points and Threshold. The Capital Fund program indicator is based on a maximum of 10 points. In order to receive a passing score under this indicator, a PHA must achieve at least 5 points or 50 percent of the available points under this indicator.

B. Scoring Elements. The Capital Fund program indicator score provides an assessment of a PHA's ability to obligate Capital Fund program funds in a timely manner, as well as a PHA's occupancy rate. The computation of the score under this PHAS indicator utilizes data obtained through analysis of obligated amounts in HUD's eLOCCS (or its successor) for all Capital Fund program grants that were open during the assessed fiscal year and PIC (or its successor) data as of the PHA's assessed Fiscal Year End. Scores are first calculated for each subindicator. From the two subindicator scores, an indicator score is then calculated.

C. Example of Score Computations. The indicator score equals the sum of the subindicator scores, described in Section II, paragraph B.

D. PHA Responsibility. PHAs are responsible for ensuring that their Capital Fund program information is submitted to eLOCCS and occupancy information to PIC by the submission due date. A PHA may not appeal its PHAS and/or Capital Fund program score based on the fact that it did not submit its Capital Fund program information to eLOCCS and occupancy information to PIC by the submission due date. PHAs shall retain supporting documentation for the Capital Fund program for at least 3 years.

Dated: February 1, 2011.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2011–2657 Filed 2–22–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–C–22A]

Notice of Availability: Notice of Technical Correction to the Notice of Funding Availability for Fiscal Year 2010 Transformation Initiative: Natural Experiments Program

AGENCY: Office of the Chief of the Human Capital Officer, HUD.

ACTION: Notice.

SUMMARY: On January 20, 2011, HUD posted on *http://www.Grants.gov,* a Notice of Funding Availability (NOFA) for Fiscal Year 2010 Transformation Initiative: Natural Experiments Grant Program. This Correction clarifies the rating Factors for Award to be used in determining selected applicants and extends the deadline date.

Funding for this effort is made available by the Department of Housing and Urban Development Appropriations Act, 2010 (Pub. L. 111–117 approved December 16, 2009). This program is undertaken by HUD's research authority under the Transformation Initiative Fund.

This Technical Correction also extends the application deadline date from Monday, February 21, 2011 to a new application deadline date of Wednesday, February 23, 2011. Applicants do not need to download a new application or resubmit their applications as a result of this notice.

The technical correction notice can be found using the Department of Housing and Urban Development agency link on the Grants.gov/Find Web site at *http://www.grants.gov/search/agency.do.* A link to Grants.gov is also available on the HUD Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm.* The Catalogue of Federal Domestic Assistance (CFDA) number for this program is 14.524. Applications must be submitted electronically through *Grants.gov.*

FOR FURTHER INFORMATION CONTACT: Questions regarding specific program requirements should be directed to the agency contact identified in the program NOFA. Program staff will not be available to provide guidance on how to prepare the application. Questions regarding the 2010 General Section should be directed to the Office of Grants Management and Oversight at (202) 708–0667 or the NOFA Information Center at 800–HUD–8929 (toll free). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at 800–877–8339.

Dated: February 17, 2011.

Barbara S. Dorf,

Director, Office of Departmental Grants, Management and Oversight, Office of the Chief Human Capital Officer.

[FR Doc. 2011–4031 Filed 2–22–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5094–N–03]

Changes to the Public Housing Assessment System (PHAS): Physical Condition Scoring Notice

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice provides additional information to public housing agencies (PHAs) and members of the public about HUD's process for issuing scores under the physical condition indicator of the Public Housing Assessment System (PHAS). This notice amends the current Physical Condition Scoring Process notice that was published on June 29, 2000, as corrected and updated by the Physical Condition Scoring Process notice that was published on November 26, 2001.

DATES: *Effective Date:* March 24, 2011.

Comment Due Date: April 25, 2011.

ADDRESSES: Interested persons are invited to submit comments on this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service, toll-free, at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Claudia Yarus, Department of Housing and Urban Development, Office of Public and Indian Housing, Real Estate Assessment Center (REAC), 550 12th Street, SW., Suite 100, Washington, DC 20410 at 202–475–8830 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339. Additional information is available from the REAC Internet site at *http://www.hud.gov/offices/reac/.*

SUPPLEMENTARY INFORMATION:

I. Purpose of This Notice

The purpose of this notice is to describe the PHAS physical condition scoring process and to prescribe the frequency of individual project inspections.

II. Purpose of the PHAS Physical Condition Assessment

The purpose of the PHAS physical condition assessment is to ensure that public housing units are decent, safe, sanitary, and in good repair, as determined by an inspection conducted in accordance with HUD's Uniform Physical Condition Standards (UPCS) codified at 24 CFR part 5, subpart G. The physical condition assessment under the PHAS utilizes uniform physical inspection procedures to determine compliance with uniform standards and is an important indicator of performance for a project and a PHA. All projects will be assessed under the physical condition indicator, even if a PHA has not converted to asset management.

The physical condition indicator score is based on a maximum of 40 points. In order to receive a passing score under this indicator, a project must achieve at least 24 points or 60 percent of the points available under this indicator. Under the PHAS physical condition indicator, REAC will calculate a score for each project, as well as for the overall physical condition of a PHA. The physical condition score, based on a 40-point scale, is included in each PHA's aggregate PHAS score.

III. Transition to Asset Management and Frequency of Inspections

The number of units in a PHA's Low-Rent program and the PHAS designation for small PHAs will determine the frequency of physical inspections during and after the transition to asset management. PHAs with less than 250 public housing units will receive a PHAS assessment, based on its PHAS designation, as follows:

(1) A small PHA that is a high performer will receive a PHAS assessment every 3 years;

(2) A small PHA that is a standard or substandard performer will receive a PHAS assessment every other year; and

(3) All other small PHAs will receive a PHAS assessment every year, including a PHA that is designated as troubled or Capital Fund troubled, in accordance with § 902.75.

For PHAs with 250 or more units of any PHAS designation, the inspection score of each project (not the overall physical indicator score) will determine the frequency of inspections for that project. Projects that score 90 points or higher based on a possible 100-point project score will be inspected triennially. Projects that score less than 90 points and at least 80 points based on a possible 100-point project score will be inspected biennially. Projects that score less than 80 points based on a possible 100-point scale will be inspected annually. The performance incentive will change from PHA-based to project-based. Project inspections for PHAs with 250 or more units will be based on the project's prior year inspection score.

Projects for any PHA designated as troubled will be inspected annually

regardless of any project's individual score. PHAs of 250 units or more with unit-weighted project scores from 2 or 3 different years will have all their prior year scores of 90 and above or 80 and above (and current year scores for each project that was inspected), multiplied by 40 percent, totaled together, and rounded to produce an overall physical indicator score.

In the baseline year, every PHA will receive an overall PHAS score and in all four of the PHAS indicators: Physical condition; financial condition; management operations; and Capital Fund program. This will allow a baseline for the physical condition inspections and the 3–2–1 inspection schedule, as well as a baseline year for the small deregulated PHAs.

IV. Item Weights and Criticality Levels, and Dictionary of Deficiency Definitions

The Item Weights and Criticality Levels tables and the Dictionary of Deficiency Definitions, currently in use, were published as Appendices 1 and 2 to the Public Housing Assessment System Physical Condition Scoring Process Interim Scoring, Corrections, and Republication notice (66 FR 59102), dated November 26, 2001. The **Federal Register** notice along with both appendices is available in HUD's REAC Physical Inspection Library Internet site at: *http://www.hud.gov/offices/reac/library/documents/fr-notice20011126.pdf.* A stand-alone, user friendly Dictionary of Deficiency Definitions is found at *http://www.hud.gov/offices/reac/pdf/pass_dict2.3.pdf.*

V. Validity and Reliability of the Physical Inspection Protocols

The Conference Report (H.R. Conf. Rep. 106–988; October 18, 2000) accompanying HUD's FY 2001 Appropriations Act (Pub. L. 106–377, approved October 27, 2000) directed HUD to continue to assess the accuracy and effectiveness of the PHAS system, in particular the physical condition inspection protocol. HUD was also directed to perform a statistically valid test of PHAS, conduct a thorough analysis of the results, and have the methodology and results reviewed by an independent expert before taking any adverse action against a PHA based solely on its PHAS score. HUD retained the Louis Berger Group (the contractor) to conduct the review of the methodology and results of the statistically valid test.

The findings of the contractor's study concluded that the physical condition inspection protocol is repeatable and reliable. A report addressing the issues raised in the Conference Report, entitled the Review and Assessment of the REAC Study of the Physical Assessment Sub-System (PASS) Process, was provided to the House and Senate Committees on Appropriations on March 1, 2001.

VI. The Physical Inspection Scoring Process

The PHAS physical inspection generates comprehensive results, including physical inspection scores reported at the project level; area level scores for each of the five physical inspection areas, as applicable; and observations of deficiencies recorded electronically by the inspector at the time of the inspection.

1. Definitions

The following are the definitions of the terms used in the physical condition scoring process:

Criticality means one of five levels that reflect the relative importance of the deficiencies for an inspectable item. Appendix 1 lists all deficiencies with their designated criticality levels, which vary from 1 to 5, with 5 being the most critical. Based on the criticality level, each deficiency has an assigned value that is used in scoring. Those values are as follows:

Criticality	Level	Value
Critical	5	5.00
Very Important	4	3.00
Important	3	2.25
Contributes	2	1.25
Slight Contribution	1	0.50

Based on the importance of the deficiency as reflected by its criticality value, points are deducted from the project score. For example, a clogged drain in the kitchen is more critical than a damaged surface on a countertop. Therefore, more points will be deducted for a clogged drain than for a damaged surface.

Deficiencies refer to specific problems that are recorded for inspectable items, such as a hole in a wall or a damaged refrigerator in the kitchen.

Inspectable area means any of the five major components of the project: Site, building exteriors, building systems, common areas, and dwelling units.

Inspectable items refer to walls, kitchens, bathrooms, and other features that are inspected in an inspectable area. The number of inspectable items varies for each inspectable area, from 8 to 17. Weights are assigned to each item to reflect their relative importance and are shown in the Item Weights and Criticality Levels tables. The tables refer to the weight of each item as the nominal item weight, which is also known as the amenity weight.

Normalized area weight represents weights used with area scores to calculate project-level scores. The weights are adjusted to reflect the inspectable items actually present at the time of the inspection. These weights are proportional, as follows:

- For dwelling units, the area score is the weighted average of sub-area scores for each unit, weighted by the total of item weights present for inspection in each unit, which is referred to as the amenity weight.
- For common areas, the area score is the weighted average of sub-area common area scores weighted by the total weights for items available for inspection (or amenity weight) in each residential building common area or common building. Common buildings refer to any inspectable building that contains no dwelling units. All common buildings are inspected.
- For building exteriors or building systems, the area scores are weighted averages of sub-area scores.
- For sites, the area score is calculated as follows: (1) The amenity weights found on a site, (2) minus deductions for deficiencies, and (3) normalized to a 100-point scale.

Normalized sub-area weight means the weight used with sub-area scores to compute an inspectable area score. These weights are proportional:

- For dwelling units, the item weight of amenities available in the unit at the time of inspection is the amenity weight.
- For common areas, the common area amenity weight is divided by a building's probability of being selected for inspection. All residential buildings with common areas may not be selected for inspection; however, all buildings with common areas are selected to determine the amenity weight.
- For building exterior and building systems, the building exterior or building system amenity weight is multiplied by the building's size (number of units) and then divided by its probability of being selected for inspection.
- For the site, there is no sub-area score. For each project, there is a single site.

Note that dividing by a building's probability of being selected for inspection is the same as multiplying by the probability weight, since the probability weight is 1 divided by the probability of being selected for inspection.

Project is used synonymously with the term "property."

Severity means one of three levels that reflect the extent of damage associated with each deficiency, with values assigned as follows:

Severity level	Value
3	1.00
2	0.50
1	0.25

The Item Weights and Criticality Levels tables show the severity levels that are possible for each deficiency. Based on the severity of each deficiency, the score is reduced. Points deducted are calculated by multiplying the item weight by the values for criticality and severity, as described below. For specific definitions of each severity level, see the Dictionary of Deficiency Definitions.

Score means a number between 0 and 100 that reflects the physical condition of a project, inspectable area, dwelling area, or sub-area. A property score includes both an alphabetical and a numerical component. The number represents an overall score for the basic physical condition of a property, including points deducted for health and safety deficiencies other than those associated with smoke detectors. The letter code specifically indicates whether health and safety deficiencies were detected, as shown in the chart below:

Physical inspection score alphanumeric codes	No health and safety deficiencies	Health and safety deficiencies			
		Non-Life threatening (NLT)	Life threatening (LT)/ exigent health and safety (EHS)	Fire safety	
				No smoke detector problems	Smoke detector problems
a	X			X	
a*	X				X
b		X		X	
b*		X			X
c			X	X	
c*			X		X

To record a health or safety problem, a letter is added to the project score (a, b, or c); and to note that one or more smoke detectors are inoperable or missing, an asterisk (*) is added to the project score.

Sub-area means an area that will be inspected for all inspectable areas except the site. For example, the building exterior for building "2" is a sub-area of the building exterior area. Likewise, unit "5" would be a sub-area of the dwelling units area. Each inspectable area for each building in a property is treated as a sub-area.

2. Scoring Protocol

To generate accurate scores, the inspection protocol includes a determination of the appropriate relative weights of the various components of the inspection; that is, which components are the most important, the next most important, and so on. For example, in the building exterior area, a blocked or damaged fire escape is more important than a cracked window, which is more important than a broken light fixture. The Item Weights and Criticality Levels tables provide the nominal weight of observable deficiencies by inspectable item for each area/sub-area. The Dictionary of Deficiency Definitions provides a definition for the severity of each deficiency in each area/sub-area.

3. Equity Principles

In addition to determining the appropriate relative weights, consideration is also given to several issues concerning equity between properties so that scores fairly assess all types of properties:

Proportionality. The scoring methodology includes an important control that does not allow any sub-area scores to be negative. If a sub-area, such as the building exterior for a given building, has so many deficiencies that the sub-area score would be negative, the score is set to zero. This control mechanism ensures that no single building or dwelling unit can affect the overall score more than its proportionate share of the whole.

Configuration of project. The scoring methodology takes into account different numbers of units in buildings. To fairly score projects with different numbers of units in buildings, the area scores are calculated for building exteriors and systems by using weighted averages of the sub-area scores, where the weights are based on the number of units in each building and on the building's probability of being selected for inspection. In addition, the calculation for common areas includes the amenities existing in the residential common areas and common buildings at the time of inspection.

Differences between projects. The scoring methodology also takes into account that projects have different features and amenities. To ensure that the overall score reflects only items that are present to be inspected, weights to calculate area and project scores are adjusted depending on how many items are actually there to be inspected.

4. Deficiency Definitions

During a physical inspection of a project, the inspector looks for deficiencies for each inspectable item within the inspectable areas, such as the walls (the inspectable item) of a dwelling unit (the inspectable area). Based on the observed condition, the Dictionary of Deficiency Definitions defines up to the three levels of severity for each deficiency: Level 1 (minor), Level 2 (major), and Level 3 (severe). The associated values were shown earlier in the first chart of Section VI. A specific criticality level, with associated values as shown in that chart, is also assigned to each deficiency. The criticality level reflects the importance of the deficiency relative to all other possible observable deficiencies for the inspectable area.

5. Health and Safety Deficiencies

The UPCS physical inspection emphasizes health and safety (H&S) deficiencies because of their crucial impact on the well-being of residents. A subset of H&S deficiencies is exigent health and safety (EHS) deficiencies. These are life threatening (LT) and require immediate action or remedy. EHS deficiencies can substantially reduce the overall project score. As noted in the definition for the word "score" in the Definitions section, all H&S deficiencies are highlighted by the addition of a letter to the numeric score.

The Item Weights and Criticality Levels tables list all H&S deficiencies with an LT designation for those that are EHS deficiencies and an NLT designation for those that are non-life threatening. The LT and NLT designations apply only to severity level 3 deficiencies.

To ensure prompt correction of H&S deficiencies, the inspector gives the project representative a deficiency report identifying every observed EHS deficiency before the inspector leaves the site. The project representative acknowledges receipt of the deficiency report by signature. The inspector also transmits the deficiency report to HUD no later than the morning of the first business day after completing the inspection. HUD makes available to all PHAs an inspection report that includes information about all of the H&S deficiencies recorded by the inspector. The report shows:

- The number of H&S deficiencies (EHS and NLT) that the inspector observed;
- All observed smoke detector deficiencies; and
- A projection of the total number of H&S problems that the inspector potentially would see in an inspection of all buildings and all units.

Problems with smoke detectors do not currently affect the overall score. When there is an asterisk indicating that the project has at least one smoke detector deficiency, that part of the score may be identified as "risk;" for example, "93a, risk" for 93a*, and "71c, risk" for 71c*. There are six distinct letter grade combinations based on the H&S deficiencies and smoke detector deficiencies observed: a, a*, b, b*, c, and c*. For example:

- A score of 90c* means that the project contains at least one EHS deficiency to be corrected, including at least one smoke detector deficiency, but is otherwise in excellent condition.
- A score of 40b* means the project is in poor condition, has at least one non-life threatening deficiency, and has at least one missing or inoperable smoke detector.
- A score of 55a means that the project is in poor condition, even though there are no H&S deficiencies.
- A project in excellent physical condition with no H&S deficiencies would have a score of 90a to 100a.

6. Scoring Process Elements

The physical condition scoring process is based on three elements within each project: (1) Five inspectable areas (site, exterior, systems, common areas, and dwelling units); (2) inspectable items in each inspectable area; and (3) observed deficiencies. In broad terms, the score for a property is the weighted average of the five inspectable area scores, where area weights are adjusted to account for all of the inspectable items that are actually present to be inspected. In turn, area scores are calculated by using weighted averages of sub-area scores (e.g., building area scores for a single building or unit scores for a single unit) for all sub-areas within an area.

7. Scoring Using Weighted Averages

For all areas except the site, normalized sub-area weights are determined using the size of sub-areas, the items available for inspection, and the sub-area's probability of selection for inspection. Sub-area scores are determined by deducting points for deficiencies based on the importance (weight) of the item, the criticality of the deficiency, and the severity of the deficiency. The maximum deduction for a single deficiency will not calculate a score of less than zero. Points will be deducted only for one deficiency of the same kind within a sub-area. For example, if multiple deficiencies for broken windows are recorded, only the most severe deficiency observed (or one of the most severe, if there are multiple deficiencies with the same level of severity) will result in a point deduction.

8. Essential Weights and Levels

The process of scoring a project's physical condition depends on the weights, levels, and associated values of the following quantities:

- Weights for the 5 inspectable areas (site, building exteriors, building systems, common areas, and dwelling units).
- Weights for inspectable items within inspectable areas (8 to 17 per area).
- Criticality levels (critical, very important, important, contributes, and slight contribution) plus their associated values for deficiencies within areas inspected.
- Severity levels (3, 2, and 1) and their associated values for deficiencies.
- Health and safety deductions (exigent/fire safety and non-life threatening for all inspectable areas).

9. Area Weights

Area weights are used to obtain a weighted average of area scores. A project's overall physical condition score is a weighted average of all inspectable area scores. The approximate relative weights are:

Inspectable area	Weight
Site	15%
Building Exterior	15%
Building Systems	20%
Common Areas	15%
Dwelling Units	35%

These weights are assigned for all inspections when all inspectable items are present for each area and for each building and unit. All of the inspectable items may not be present in every inspectable area. When items are missing in an area, the area weights are modified to reflect the missing items so that within that area they will add up to 100 percent. Area weights are recalculated when some inspectable items are missing in one or more area(s).

Although rare, it is possible that an inspectable area could have no inspectable items available; for example, there could be no common areas in the inspected residential buildings and no common buildings. In this case, the weight of the "common areas" would be 0 percent and its original 15 percent weight would be equitably redistributed to the other inspectable areas, as shown in the example below:

Inspectable area	Normal weight	Missing common areas	Adjustment	Adjusted weight
Site	15%	15%	.15/.85 = ...	18%
Building Exterior	15%	15%	.15/.85 = ...	18%
Building Systems	20%	20%	.20/.85 = ...	23%
Common Areas	15%	0%	.....	0%
Dwelling Units	35%	35%	.35/.85 = ...	41%
Total	100%	85%	.....	100%

The original 15 percent weight for the common areas is redistributed by totaling the weights of other inspectable areas (100 percent − 15 percent = 85 percent) and dividing the weights of each other area by that amount (0.85). The modified weights would then be 18 percent for site, 18 percent for building exterior, 23 percent for building systems, 0 percent for common areas, 41 percent for dwelling units, and again be equal to (be normalized to) 100 percent.

10. Area and Sub-Area Scores

For inspectable areas with sub-areas (all areas except sites), the inspectable area score is a weighted average of the sub-area scores within that area. The scoring protocol determines the amenity weight for the site and each sub-area as noted in Section VI.1 under the definition for normalized sub-area weight. For example, a property with no fencing or gates in the inspectable area of the site would have an amenity weight of 90 percent or 0.9 (100 percent minus 10 percent for lack of fencing and gates), and a single dwelling unit with all items available for inspection, except a call-for-aid would have an amenity weight of 0.98 or 98 percent (100 percent minus 2 percent for lack of call-for-aid). A call-for-aid is a system designed to provide elderly residents the opportunity to call for help in the event of an emergency.

The amenity weight excludes all health and safety items. Each deficiency as weighted and normalized are subtracted from the sub-area or site-weighted amenity score. Sub-area and site area scores are further reduced for any observed health and safety deficiencies. These deductions are taken at the site, building, or unit level. At this point, a control is applied to prevent a negative site, building, or unit score. The control ensures that no single building or unit can affect an area score more than its weighted share.

11. Overall Project Score

The overall project score is the weighted average of the five inspectable area scores, with the five areas weighted by their normalized weights. Normalized area weights reflect both the initial weights and the relative weights between areas of inspectable items actually present. For reporting purposes, the number of possible points is the normalized area weight adjusted by multiplying by 100 so that the possible points for the five areas add up to 100. In the Physical Inspection Report for each project that is sent to the PHA, the following items are listed:

- Normalized weights as the "possible points" by area;
- The area scores, taking into account the points deducted for observed deficiencies;
- The deductions for H&S for each inspectable area; and
- The overall project score.

The Physical Inspection Report allows the PHA and the project manager to see the magnitude of the points lost by inspectable area and the impact on the score of the H&S deficiencies.

12. Examples of Physical Condition Score Calculations

The physical inspection scoring is deficiency based. All projects start with 100 points. Each deficiency observed reduces the score by an amount dependent on the importance and severity of the deficiency, the number of buildings and units inspected, the inspectable items actually present to be inspected, and the relative weights between inspectable items and inspectable areas.

The calculation of a physical condition score is illustrated in the examples below. The examples go through a number of interim stages in calculating the score, illustrating how sub-area scores are calculated for a single project, how the sub-area scores are rolled up into area scores, and how area scores are combined to calculate the overall project score. One particular deficiency is carried through the examples showing the end result.

As will be seen, the deduction starts out as a percent of the sub-area. Then the area score is considerably decreased in the final overall project score because the deduction is averaged across other sub-areas and then averaged across the five inspectable areas. Although interim results in the examples are rounded, only the final results are rounded for actual calculations.

To illustrate how physical condition scores are calculated, three examples are provided below. Following this section, another example is given specifically for public housing projects to show how project scores are rolled up into the PHAS physical indicator score for the PHA as a whole.

Example #1 illustrates how the score for a sub-area of building systems is calculated. Consider a 10-unit residential building in which the five inspectable areas are present. During the inspection, damaged vents in the roof are observed. This deficiency reflected a severity level of 1, which has a severity weight of 0.25; a criticality level of 4, which has a criticality weight of 3; and an item weight of 16.0. The amount of the points deducted is the item weight, multiplied by the criticality weight multiplied by the severity value. This is illustrated in the table below.

Area: Building Exterior

Item: Roof

Deficiency: Damaged Vents

Criticality Level: 4, Severity Level: 1

Element	Associated value
Item Weight	16
Criticality Weight	3.0
Severity Weight	0.25
Calculation of Points Deducted for Deficiency	$16 \times 3 \times 0.25 = 12$

If this building exterior has all inspectable items except for a fire escape, the amenity weight for the first building exterior adds up to 84 percent (100 percent starting point minus 16 percent for the lack of a fire escape, excluding H&S items). If the damaged roof vents were the only deficiency observed, then the initial proportionate score for this sub-area (Building Exterior #1) would be the amenity score minus the deficiency points and then normalized to a 100-point basis, as shown below. Additional deficiencies or H&S deficiencies (calculated in the same manner) would further decrease the sub-area score, and if the score dropped below zero, it would be set to zero.

Element	Associated value
Amenity Score	84
Deficiency Points	12
Calculation for the Initial Proportionate Score	84 − 12 = 72
Normalizing Factor	100
Calculation for the Initial Sub-Area Score Building Exterior #1	$(72/84) \times 100 = 85.7$

Example #2 illustrates how the area score is calculated. Consider a property with two buildings with the following characteristics:

• Building #1 (from Example #1, above):

—10 units

—84 percent amenity weight for items that are present to be inspected in the building exterior

—Building exterior score is 85.7 points

• Building #2:

—20 units

—100 percent amenity weight for items that are present to be inspected in the building exterior

—Building exterior score is 69.1 points

The building exterior score for the building exterior area is the weighted average of the individual scores for each building exterior. Each building exterior score is weighted by the number of units and the percent of the weight for items present to be inspected in the building exterior.

Building	Number of units	×	Amenity weight	=	Unit weighted average	/	Sum of the building weights	×	Initial proportionate score	=	Building exterior area score
#1	10		0.84		08.4		28.4		85.7		25.3
#2	20		1.00		20.0		28.4		69.1		48.7
Total	30				28.4						74.0

Example #3 illustrates how the overall weighted average for the building exterior area amenity weight is calculated. The separate amenity weights for buildings #1 and #2, above, are used in conjunction with the total units to calculate the building exterior area amenity weight. Each building amenity weight is multiplied by the number of units in that building and then divided by the total number of units for all buildings, as shown below. For purposes of the next example, the Overall Building Exterior Area Amenity Weight of 94.7 was rounded to 95.

Building exterior	Number of units	×	Amenity weight	=	Unit weighted average	/	Total units	×	Normalized to a 100 point basis	=	Overall building exterior area weighted average amenity weight
#1	10		0.84		08.4		30		100		28.0
#2	20		1.00		20.0		30		100		66.7
Total	30				28.4						94.7

Example #4 illustrates how the score for a property is calculated. Consider a property with the following characteristics:

• Site:

—Score: 90 points

—100 percent amenity weight

—Nominal weight: 15 percent

• Building Exteriors (from example #2 and #3, above):

—Score: 74 points

—95 percent weighted average amenity weight

—Nominal weight: 15 percent

• Building Systems:

—Score: 70 points

—80 percent weighted average amenity weight

—Nominal weight: 20 percent

• Common Areas:

—Score: 60 points

—30 percent weighted average amenity weight

—Nominal weight: 15 percent

• Dwelling Units:

—Score: 80 points

—90 weighted average amenity weight

—Nominal weight: 35 percent

To continue the scoring protocol, the adjusted area weights for all five inspectable areas are determined. For purposes of this example, the adjusted weights and maximum possible points for each of the five inspectable areas are shown in the table below. All of the values in this table, except for the values for building exteriors, are presumed. The values for building exteriors were calculated as part of this ongoing example.

Inspectable area	Area weight	×	Amenity weight	=	Amenity weighted average	/	Total adjusted weight	×	Normalized to 100 point scale	=	Maximum possible points
Site	15		1.00		15.0		81.2		100		18.5
Building Exterior	15		0.95		14.2		81.2		100		17.5
Building Systems	20		0.80		16.0		81.2		100		19.7
Common Areas	15		0.30		04.5		81.2		100		05.5
Dwelling Units	35		0.90		31.5		81.2		100		38.8
Total					81.2						100.0

The nominal possible points for each inspectable area is multiplied by the amenity weight, divided by the total adjusted amenity weight, and normalized to a 100-point basis, in order to produce the possible points for the inspectable area. The property score is the sum of all weighted area scores for that property. The sample shown below reflects how the deficiency from example #1 in the building exterior area impacts the overall property score. The property score of 77.8 is rounded to 78 for the final example.

Inspectable area	Area points	×	Area score	/	Normalized to a 100 point scale	=	Project #1 weighted area scores
Site	18.5		90		100		16.7
Building Exterior	17.5		74		100		13.0
Building Systems	19.7		70		100		13.8
Common Areas	05.5		60		100		03.3
Dwelling Units	38.8		80		100		31.0
Total	100.0						77.8

13. Computing the PHAS Physical Inspection Score

The overall physical inspection score for the PHAS for a PHA is the weighted average of the PHA's individual project physical inspection scores, where the weights are the number of units in each project divided by the total number of units in all projects for the PHA. For example, the project described in Example #1 from above has a score of 78 with 30 units. Using another project with a score of 92 and 650 units with project from Example #1 would calculate to an overall physical inspection score of 91. Note the impact on the overall physical inspection of a single property with a large number of units.

Project	Weighted average property score	×	Rescaling to the 40-point basis	=	×	Number of units in the property	/	Total PHA units	=	Project weighted area score
#1	78		.4	31.2		30		680		1.4
#2	92		.4	36.8		650		680		35.2
Total	100									36.6

The physical subsystem indicator score for this PHA provided to HUD's centralized scoring system would be 36.6, rounded to a score of 37. Weighted-average property scores are scaled to a 40-point basis by multiplying by 0.4. The total is then multiplied by the number of units within the property and divided by the total number of PHA units, to produce a unit-weighted average. All of the project's weighted area scores are totaled and rounded using a rounding policy of rounding up to the nearest whole number a score ending in 0.5 and above, and rounding down a score ending in 0.4 and below.

14. Examples of Sampling Weights for Buildings

As shown above, buildings with the most dwelling units have the greatest impact on the project's overall physical score. Buildings with the most dwelling units also have the greatest likelihood of being selected for inspection. The determination of which buildings will be inspected is a two-phase process. In Phase 1 of the process, all buildings that contain dwelling units are sorted by size and then the units are randomly sorted within each building. A computer program selects a random sample of units to be inspected.

All buildings in a project may not be selected in the building sample during Phase 1 sampling, because a building may have so few units, such as a sole scattered-site single-family unit. A Phase 2 sampling is used to increase the size of the number of buildings selected. In Phase 2, the additional buildings that are included in the sample are selected with equal probability so that the residential building sample size is the lesser of either the dwelling unit sample size or the number of all residential buildings. All common buildings are selected for inspection. To illustrate the process for sampling buildings, 2 examples are provided below:

Example #1. This first example uses a project with 2 buildings where both buildings are selected for inspection. Building A has 10 dwelling units and building B has 20 dwelling units, for a total of 30 dwelling units. The target dwelling unit sample size for a project with 30 dwelling units is 15 units. The sampling ratio for this project is two and is calculated by dividing the 15 target units by the total number of units (30/15=2). In this illustration, every second dwelling unit will be selected from the random sort of the units within each building. Since both buildings have at least 2 dwelling units, both buildings are certain to be selected for inspection in Phase 1. Since all buildings were selected in Phase 1 of sampling, Phase 2 is not required. Both buildings in this example have a selection probability of 1.00 and a sampling weight of 1.00.

Example #2. This example uses a project where only some of the buildings within the project are selected for inspection in Phase 1, so a Phase 2 sampling is required. For this example, a project is comprised of 22 residential buildings. Two buildings each have 10 dwelling units and 20 buildings are scattered-site single-family dwelling units. The project has 40 total dwelling units (two buildings with 10 units each added to 20 single units (20+20)). The target sample size for a project with 40 dwelling units is 16 units, and the sampling ratio would be 2.5 (40 total dwelling units divided by 16 target dwelling units). Since the target sample size is the lesser of either the dwelling unit sample size (16) or the number of all residential buildings (22), 16 residential buildings would be inspected for this project.

In Phase 1 of sampling, the 2 buildings with 10 dwelling units are selected with certainty since they both have more than 2.5 dwelling units. Each of the scattered-site single family buildings then have a 40 percent probability of selection (100 percent or 1 divided by the 2.5 sampling ratio equals 0.40). Assume that both large buildings and 8 of the single-family buildings (10 buildings in all) were selected in Phase 1. This leaves 12 single-family buildings available for selection during Phase 2. Since 16 residential buildings need to be inspected, the sample of 10 buildings selected in Phase 1 falls 6 buildings short of a full sample. Therefore, the system will select 6 of the 12 previously unselected buildings during Phase 2 sampling. The chance of any single building, of the 12 remaining buildings, being selected during Phase 2 is 0.50 or

50 percent (6 target buildings divided by 12 previously unselected buildings). The overall probability of any one of the 20 single-family units being selected during either Phase 1 or Phase 2 is calculated as follows:

Element	Protocol	Calculation
Phase 1 Single-family Unit Building Selection	8 of 20 buildings	8/20 = .40.
Phase 2 Single-family Unit Building Selection	6 of 12 buildings	6/12 = .50.
Overall Possibility of Single-family Unit Building Selection During Phase 2.	100% minus the 40% already selected during Phase 1 and multiplied by the 50% chance of being selected during Phase 2.	(1.00 − .40) x .50 = .30.
Overall Probability of a Single-family Unit Building Selection.	Probability from Phase 1 added to probability from Phase 2.	.40 + .30 = .70.
Verification—Overall Single-family Unit Building Selection.	14 of 20 buildings	14/20 = .70.
Probability Weight* of Selection for Single-family Unit Building Selection.	1 divided by the overall probability of Single-family Unit Building Selection.	1.00/.70 = 1.43.

See the note in the definitions section under "VI. The Physical Inspection Scoring Process" in this Appendix A for "normalized sub-area weight."

15. Accessibility Questions

HUD reviews particular elements during the physical inspection to determine possible indications of noncompliance with the Fair Housing Act (42 U.S.C. 3601–3619) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). More specifically, during the physical inspection, the inspector will record if: (1) There is a wheelchair-accessible route to and from the main ground floor entrance of the buildings inspected; (2) the main entrance for every building inspected is at least 32 inches wide, measured between the door and the opposite door jamb; (3) there is an accessible route to all exterior common areas; and (4) for multi-story buildings that are inspected, the interior hallways to all inspected units and common areas are at least 36 inches wide. These items are recorded, but do not affect the score.

Dated: February 1, 2011.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2011–2633 Filed 2–18–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5502–N–01]

Notice of Single Family Loan Sales (SFLS 2011–1)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of sales of mortgage loans.

SUMMARY: This notice announces HUD's intention to sell certain unsubsidized single family mortgage loans, without Federal Housing Administration (FHA) mortgage insurance, in a series of competitive, sealed bid sales, commencing with the first sale offering (SFLS 2011–1). This notice also generally describes the bidding process for the sale and certain persons who are ineligible to bid. The sales are scheduled for March 9, June 22 and September 14, 2011.

DATES: For the first sale action, the Bidder's Information Package (BIP) was made available to qualified bidders on February 9, 2011. Bids for the loans must be submitted on the bid date, which is currently scheduled for March 9, 2011. HUD anticipates that award(s) will be made on or about March 10, 2011.

ADDRESSES: To become a qualified bidder and receive the BIP, prospective bidders must complete, execute, and submit a Confidentiality Agreement and a Qualification Statement acceptable to HUD. Both documents will be available on the HUD Web site at: *http://www.hud.gov/sfloansales.* Please mail and fax executed documents to HUD's Asset Sales Office: Asset Sales Office, United States Department of Housing and Urban Development, 451 7th Street SW., Room 3136, Washington, DC 20410, Attention: Single Family Sale Coordinator, Fax: 202–708–2771.

FOR FURTHER INFORMATION CONTACT: John Lucey, Deputy Director, Asset Sales Office, Room 3136, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone 202–708–2625, extension 3927. Hearing- or speech-impaired individuals may call 202–708–4594 (TTY). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: HUD announces its intention to sell in SFLS 2011–1 certain unsubsidized non-performing mortgage loans (Mortgage Loans) secured by single family properties located throughout the United States. A listing of the Mortgage Loans will be included in the due diligence materials made available to bidders. The Mortgage Loans will be sold without FHA insurance and with servicing released. HUD will offer qualified bidders an opportunity to bid competitively on the Mortgage Loans.

The Bidding Process

The BIP will describe in detail the procedure for bidding in SFLS 2011–1. The BIP will also include a standardized non-negotiable Conveyance, Assignment and Assumption Agreement (CAA Agreement). Bidders will be required to submit a deposit with their bid. Deposits are calculated based upon each bidder's aggregate bid price.

HUD will evaluate the bids submitted and determine the successful bid, in terms of the best value to HUD, in its sole and absolute discretion. If a bidder is successful, the bidder's deposit will be non-refundable and will be applied toward the purchase price. Deposits will be returned to unsuccessful bidders. For the first sale action, closings are expected to take place on March 30, 2011 and May 5, 2011.

These are the essential terms of sale. The CAA Agreement, which will be included in the BIP, will contain additional terms and details. To ensure a competitive bidding process, the terms of the bidding process and the CAA Agreement are not subject to negotiation.

Due Diligence Review

The BIP will describe how bidders may access the due diligence materials remotely via a high-speed Internet connection.

Mortgage Loan Sale Policy

HUD reserves the right to remove Mortgage Loans from SFLS 2011–1 at any time prior to the award date. HUD also reserves the right to reject any and all bids, in whole or in part, without

prejudice to HUD's right to include any Mortgage Loans in a later sale. Mortgage Loans will not be withdrawn after the award date except as is specifically provided in the CAA Agreement.

This is a sale of unsubsidized mortgage loans, which are to be assigned to HUD pursuant to section 204(a)(1)(A) of the National Housing Act, amended under Title VI of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1999. The sale of the loans is pursuant to section 204(g) of the Act.

Mortgage Loan Sale Procedure

HUD selected a competitive sale as the method to sell the Mortgage Loans. This method of sale optimizes HUD's return on the sale of these Mortgage Loans, affords the greatest opportunity for all qualified bidders to bid on the Mortgage Loans, and provides the quickest and most efficient vehicle for HUD to dispose of the Mortgage Loans.

Bidder Eligibility

In order to bid in the sale, a prospective bidder must complete, execute and submit both a Confidentiality Agreement and a Qualification Statement acceptable to HUD. The following individuals and entities are ineligible to bid on any of the Mortgage Loans included in SFLS 2011–1:

(1) An employee of HUD, a member of such employee's household, or an entity owned or controlled by any such employee or member of such an employee's household;

(2) An individual or entity that is debarred, suspended, or excluded from doing business with HUD pursuant to Title 24 of the Code of Federal Regulations, Part 24, and Title 2 of the Code of Federal Regulations, Part 2424;

(3) An individual or entity that has been suspended, debarred or otherwise restricted by any Department or Agency of the Federal Government or of a State Government from doing business with such Department or Agency.

(4) An individual or entity that has been debarred, suspended, or excluded from doing mortgage related business, including having a Business License suspended, surrendered or revoked, by any federal, state or local government agency, division or department;

(5) A contractor, subcontractor and/or consultant or advisor (including any agent, employee, partner, director, principal or affiliate of any of the foregoing) who performed services for or on behalf of HUD in connection with the Sales;

(6) A individual or entity that uses the services, directly or indirectly, of any person or entity ineligible under subparagraphs 1 through 3i above to assist in preparing any of its bids on the Mortgage Loans;

(7) A individual or entity which employs or uses the services of an employee of HUD (other than in such employee's official capacity) who is involved in the Sales;

(8) A entity or individual that serviced or held any Mortgage Loan at any time during the 2-year period prior to the bid is ineligible to bid on such Mortgage Loan or on the pool containing such Mortgage Loan, and

(9) A entity or individual that is: (a) Any affiliate or principal of any entity or individual described in the preceding sentence (paragraph 8); (b) any employee or subcontractor of such entity or individual during that 2-year period; or (c) any entity or individual that employs or uses the services of any other entity or individual described in this paragraph in preparing its bid on such Mortgage Loan.

Freedom of Information Act Requests

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding SFLS 2011–1, including, but not limited to, the identity of any successful bidder and its bid price or bid percentage for any pool of loans or individual loan, upon the closing of the sale of all the Mortgage Loans. Even if HUD elects not to publicly disclose any information relating to SFLS 2011–1, HUD will have the right to disclose any information that HUD is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

Scope of Notice

This notice applies to SFLS 2011–1 and does not establish HUD's policy for the sale of other mortgage loans.

Dated: February 17, 2011.

David H. Stevens,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2011–4029 Filed 2–22–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2011–N026; 60120–1113–0000–D2]

Endangered and Threatened Wildlife and Plants; Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permits.

SUMMARY: We announce our receipt of applications to conduct certain activities pertaining to enhancement of survival of endangered species. The Endangered Species Act requires that we invite public comment on these permit applications.

DATES: Written comments on this request for a permit must be received by March 25, 2011.

ADDRESSES: Submit written data or comments to the Assistant Regional Director-Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, CO 80225–0486; facsimile 303–236–0027.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal indentifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Document Availability

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552), by any party who submits a request for a copy of such documents within 30 days of the date of publication of this notice to Kris Olsen, by mail (*see* **ADDRESSES**) or by telephone at 303–236–4256. All comments we receive from individuals become part of the official public record.

Applications

The following applicants have requested issuance of enhancement of survival permits to conduct certain activities with endangered species pursuant to Section 10(a)(1)(A) of the

Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Applicant: Craig D. Miller, Boulder, Colorado, TE–040571. The applicant requests a renewed permit to take Southwestern willow flycatcher *(Empidonax traillii extimus)* in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicant: Mark Peyton, Central Nebraska Public Power and Irrigation District, Gothenburg, Nebraska, TE–038221. The applicant requests a renewed permit to take piping plover *(Charadrius melodus),* interior least tern *(Sterna antillarum),* and American burying beetle *(Nicrophorus americanus)* in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicant: Kevin Bestgen, Colorado State University, Ft. Collins, Colorado, TE–046795. The applicant requests a renewed permit to take Colorado pikeminnow *(Ptychocheilus lucius)* and razorback sucker *(Xyrauchen texanus)* in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicant: Randy Rieches, San Diego Wild Animal Park, Escondido, California, TE–051835. The applicant requests a renewed permit to take black-footed ferret *(Mustela nigripes)* in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicant: William Sloan, National Park Service, Moab, Utah, TE–047808. The applicant requests a renewed permit to take Southwestern willow flycatcher *(Empidonax traillii extimus)* in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicant: Sam Stukel, South Dakota Game, Fish, and Parks, Yankton, South Dakota, TE–124904. The applicant requests a renewed permit to take pallid sturgeon *(Scaphirhynchus albus)* in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicant: Robert Muth, U.S. Fish and Wildlife Service, Bozeman Fish Technology Center, Bozeman, Montana, TE–038970. The applicant requests a renewed permit to take pallid sturgeon *(Scaphirhynchus albus),* June sucker *(Chasmistes liorus),* bonytail *(Gila elegans),* and woundfin *(Plagopterus argentissimus)* in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicant: Steven Wall, Volga, South Dakota, TE–121908. The applicant requests a renewed permit to take Topeka shiner *(Notropis topeka)* in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicant: Jay P. Gilbertson, East Dakota Water Development District, Brookings, South Dakota, TE–056001. The applicant requests a renewed permit to take Topeka shiner *(Notropis topeka)* in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Dated: February 11, 2011.

Noreen E. Walsh,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 2011–3933 Filed 2–22–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAC01000 L10100000.XZ0000 LXSIOVHD0000]

Notice of Public Meeting of the Central California Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Central California Resource Advisory Council (RAC) will meet as indicated below.

DATES: A business meeting will be held Friday, April 8, 2011, at the Seaman's Lodge in Pioneer Park, 425A Nimrod St., Nevada City, beginning at 8 a.m., followed by a field trip that afternoon to BLM lands in Nevada County. Members of the public are welcome to attend the field trip and meeting. Field trip participants must provide their own transportation and lunch.

On April 9, the meeting will resume at 8 a.m. at Seaman's Lodge. Time for public comment is reserved from 9 a.m. to 10 a.m.

FOR FURTHER INFORMATION CONTACT: BLM Central California District Manager Kathy Hardy, (916) 978–4626; or BLM Public Affairs Officer David Christy, (916) 941–3146.

SUPPLEMENTARY INFORMATION: The 12-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Central California. At this meeting, agenda topics will include an update on Resource Management Plans and other resource management issues. Additional ongoing business will be discussed by the council. All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. The meeting and tour are open to the public, but individuals who wish to attend the tour must provide their own vehicles, food and water. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: February 9, 2011.

David Christy,

Public Affairs Officer.

[FR Doc. 2011–4042 Filed 2–22–11; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0102]

Agency Information Collection Activities: Extension of a Previously Approved Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: COPS Progress Report.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 75, Number 239, pages 22904–22905, on December 14, 2010, allowing for a 60 day comment period.

The purpose of this notice is to allow for 30 days for public comment until March 25, 2011. This process is

conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Ashley Hoornstra, Department of Justice Office of Community Oriented Policing Services, 145 N Street, NE., Washington, DC 20530.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Ashley Hoornstra at 202–616–1314 or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a previously approved collection; comments requested.

(2) *Title of the Form/Collection:* COPS Progress Report.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Law enforcement and public safety agencies, institutions of higher learning and non-profit organizations that are recipients of COPS hiring or non-hiring grants.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that approximately 7,400 annual, quarterly, and final report respondents can complete the report in an average of 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,700 total burden hours.

If additional information is required contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street, NE., Suite 2E–502, Washington, DC 20530.

Dated: February 16, 2011.

Lynn Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2011–3950 Filed 2–16–11; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0098]

Agency Information Collection Activities: Revision of a Previously Approved Collection, With Change; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: COPS Application Package.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 75, Number 233, page 75697 on December 6, 2010, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 25, 2011. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Ashley Hoornstra, Department of Justice Office of Community Oriented Policing Services, 145 N Street, NE., Washington, DC 20530.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Ashley Hoornstra at 202–616–1314 or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a previously approved collection, with change.

(2) *Title of the Form/Collection:* COPS Application Package.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office

of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Law enforcement agencies and other public and private entities that apply for COPS Office grants or cooperative agreements will be asked to complete the COPS Application Package. The COPS Application Package includes all of the necessary forms and instructions that an applicant needs to review and complete to apply for COPS grant funding. The package is used as a standard template for all COPS programs.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 14,100 respondents annually will complete the form within 11.3 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 159,330 total annual burden hours associated with this collection.

If additional information is required contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street, NE., Suite 2E–502, Washington, DC 20530.

Dated: February 16, 2011.

Lynn Murray,

Department Clearance Officer, PRA, U.S Department of Justice.

[FR Doc. 2011–3951 Filed 2–22–11; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140–NEW]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Letter Requesting Supporting Documents Identifying a Legal Entity.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 75, Number 240, page 78268 on December 15, 2010, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 25, 2011. This process is conducted in accordance with 5 CFR 1320.10. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: DOJ Desk Officer, Fax 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number [1140–xxxx]. Also include the DOJ docket number found in brackets in the heading of this document. If you have questions concerning the collection, please contact Gary Schaible, *Gary.Schiable@atf.gov* or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New.

(2) *Title of the Form/Collection:* Letter Requesting Supporting Documents Identifying a Legal Entity.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: none. Abstract: The collection of information will be used to determine the lawful existence and validity of a legal entity before ATF approves the transfer of an NFA firearm to that entity.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 5000 respondents will spend approximately 30 minutes to compile documentation requested by the letter.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 5,000 total burden hours associated with this collection.

If additional information is required contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Room 2E–502, Two Constitution Square, 145 N Street, NE., Washington, DC 20530.

Dated: February 16, 2011.

Lynn Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2011–3953 Filed 2–22–11; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0078]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Limited Permittee Transaction Record.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 75, Number 239, page 77905 on December 14, 2010, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public

comment until March 25, 2011. This process is conducted in accordance with 5 CFR 1320.10. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: DOJ Desk Officer, Fax: 202–395–7285, or be e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number [1140–0078]. Also, include the DOJ docket number found in brackets in the heading of this document. If you have questions concerning the collection, please contact William Miller, *William.Miller@atf.gov* or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Limited Permittee Transaction Record.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Individuals or households. Abstract: The purpose of this collection is to ensure that records are available for tracing explosive materials when necessary and to ensure that limited permittees do not exceed their maximum allotment of receipts of explosive materials.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 5,000 respondents, who will spend approximately 5 minutes to receive, file, and forward the appropriate documentation.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 12,000 total burden hours associated with this collection.

If additional information is required contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Two Constitution Square, Room 2E–502, 145 N Street, NE., Washington, DC 20530.

Dated: February 16, 2011.

Lynn Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2011–3952 Filed 2–22–11; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Industrial Macromolecular Crystallography Association

Correction

In notice document 2011—2412 appearing on page 6497 in the issue of Friday, February 4, 2011, make the following corrections:

1. On page 6497, in the second column, in the document's subject, "Notice Pursuant to the National Cooperative Research and Production Act of 1993—Industrial Nacromolecular Crystallography Association" should read "Notice Pursuant to the National Cooperative Research and Production Act of 1993—Industrial Macromolecular Crystallography Association".

2. On the same page, in the second column, in the fourth line from the bottom, "Industrial Nacromolecular" should read "Industrial Macromolecular."

3. On the same page, in the second column, in the third line from the bottom, "("INCA")" should read "("IMCA")".

4. On the same page, in the third column, in the fifth line of the second paragraph, "INCA" should read "IMCA".

5. On the same page, in the third column, in the first line of the third paragraph, "INCA" should read "IMCA".

[FR Doc. C1–2011–2412 Filed 2–22–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on January 4, 2011, Sigma Aldrich Manufacturing LLC., 3500 Dekalb Street, St. Louis, Missouri 63118, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Aminorex (1585)	I
Gamma Hydroxybutyric Acid (2010).	I
Methaqualone (2565)	I
Alpha-ethyltryptamine (7249)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (MDMA) (7405).	I
4-Methoxyamphetamine (7411)	I
Bufotenine (7433)	I

Drug	Schedule
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470).	I
N-Benzylpiperazine (BZP) (7493)	I
Heroin (9200)	I
Normorphine (9313)	I
Etonitazene (9624)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Nabilone (7379)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium, powdered (9639)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

The company plans to import the listed controlled substances for sale to research facilities for drug testing and analysis.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than [insert date 30 days from date of publication].

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: February 15, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–3945 Filed 2–22–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated November 1, 2010, and published in the **Federal Register** on November 12, 2010, 75 FR 69461, Wildlife Laboratories, 1401 Duff Drive, Suite 400, Fort Collins, Colorado 80524, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Etorphine Hydrochloride (9059), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance for sale to its customer.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and § 952(a) and determined that the registration of Wildlife Laboratories to import the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Wildlife Laboratories to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: February 15, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–3948 Filed 2–22–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 6, 2011, Johnson Matthey Pharmaceutical Materials Inc., Pharmaceutical Service, 25 Patton Road, Devens, Massachusetts 01434, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Amphetamine (1100)	II
Methylphenidate (1724)	II
Nabilone (7379)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Hydrocodone (9193)	II

The company plans to utilize this facility to manufacture small quantities of the listed controlled substances in bulk and to conduct analytical testing in support of the company's primary manufacturing facility in West Deptford, New Jersey. The controlled substances manufactured in bulk at this facility will be distributed to the company's customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than April 25, 2011.

Dated: February 15, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–3928 Filed 2–22–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Registration

By Notice dated October 14, 2010, and published in the **Federal Register** on October 26, 2010, 75 FR 65659, Chemic Laboratories, Inc., 480 Neponset Street, Building 7, Canton, Massachusetts 02021, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Cocaine (9041), a basic class of controlled substance listed in schedule II.

The company plans to manufacture small quantities of the above listed controlled substance for distribution to its customers for the purpose of research.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Chemic Laboratories to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Chemic Laboratories to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above-named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: February 15, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–3929 Filed 2–22–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 19, 2010, and published in the **Federal Register** on October 26, 2010, 75 FR 65658, Aldrich Chemical Company, Inc., DBA Isotec, 3858 Benner Road, Miamisburg, Ohio 45342–4304, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Methaqualone (2565)	I
Ibogaine (7260)	I
Tetrahydrocannabinols (7370)	I
2,5-Dimethoxyamphetamine (7396).	I
Psilocyn (7438)	I
Normorphine (9313)	I
Acetylmethadol (9601)	I
Alphacetylmethadol except levo–alphacetylmethadol (9603).	I
Normethadone (9635)	I
Norpipanone (9636)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Cocaine (9041)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Meperidine intermediate-A (9232)	II
Meperidine intermediate-B (9233)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Dextropropoxyphene, bulk, (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II

The company plans to manufacture small quantities of the listed controlled substances to produce isotope labeled standards for drug testing and analysis.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Aldrich Chemical Company Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Aldrich Chemical Company Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: February 15, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–3927 Filed 2–22–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 19, 2010, and published in the **Federal Register** on October 26, 2010, 75 FR 65659, Johnson Matthey Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066–1742, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Tetrahydrocannabinols (7370)	I
Dihydromorphine (9145)	I
Difenoxin (9168)	I
Propiram (9649)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Nabilone (7379)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for sale to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of

Johnson Matthey Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Johnson Matthey Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: February 15, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–3925 Filed 2–22–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 8, 2010, and published in the **Federal Register** on October 20, 2010, 75 FR 64745, Halo Pharmaceutical Inc., 30 North Jefferson Road, Whippany, New Jersey 07981, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Dihydromorphine (9145)	I
Hydromorphone (9150)	II

Dihydromorphine is an intermediate in the manufacture of Hydromorphone and is not for commercial distribution. The company plans to manufacture Hydromorphone HCL for sale to other manufacturers and for the manufacture of other controlled substance dosage units for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Halo Pharmaceutical Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Halo Pharmaceutical Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: February 16, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–3924 Filed 2–22–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Parole Commission

[5 U.S.C. Section 552b]

Meetings; Sunshine Act; Public Announcement Pursuant to the Government in the Sunshine Act Public Law 94–409

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: 10 a.m., Thursday, February 17, 2011.

PLACE: U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815.

STATUS: Closed.

MATTERS CONSIDERED: The following matter will be considered during the closed meeting: Discussion of an original jurisdiction case pursuant to 28 CFR 2.17.

AGENCY CONTACT: Patricia W. Moore, Staff Assistant to the Chairman, United States Parole Commission, (301) 492–5933.

Dated: February 15, 2011,

Rockne Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 2011–3902 Filed 2–22–11; 8:45 am]

BILLING CODE 4410–31–M

DEPARTMENT OF JUSTICE

United States Parole Commission

Record of Vote of Meeting Closure (Pub. L. 94–409) (5 U.S.C. Sec. 552b)

I, Isaac Fulwood, of the United States Parole Commission, was present at a meeting of said Commission, which started at approximately 11:30 a.m., on Thursday, February 10, 2011, at the U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815. The purpose of the meeting was to decide four petitions for reconsideration pursuant to 28 CFR Section 2.27 and one pursuant to 28 CFR Section 2.17. Four Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Isaac Fulwood, Cranston J. Mitchell, Patricia Cushwa and J. Patricia Wilson Smoot.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: February 11, 2011.

Isaac Fulwood,

Chairman, U.S. Parole Commission.

[FR Doc. 2011–3891 Filed 2–22–11; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Division of Coal Mine Workers' Compensation; Proposed Extension of Existing Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs is soliciting comments concerning its proposal to extend OMB approval of the information collection for the following medical reports:

Roentgenographic Interpretation (CM–933), Roentgenographic Quality Rereading (CM–933b), Medical History and Examination for Coal Mine Workers' Pneumoconiosis (CM–988), Report of Arterial Blood Gas Study (CM–1159) and Report of Ventilatory Study (CM–2907). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before April 25, 2011.

ADDRESSES: Mr. Vincent Alvarez, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0372, fax (202) 693–1447, E-mail *Alvarez.Vincent@dol.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background: The Black Lung Benefits Act of 1977 as amended, 20 U.S.C. 901 *et seq.* and 20 CFR 718.102 set forth criteria for the administration and interpretation of x-rays. When a miner applies for benefits, the Division of Coal Mine Workers' Compensation (DCMWC) is required to schedule a series of four diagnostic tests to help establish eligibility for black lung benefits. Each of the diagnostic tests has its own form that sets forth the medical results. The forms are: Roentgenographic Interpretation (CM–933), Roentgenographic Quality Rereading (CM–933b), Medical History and Examination for Coal Mine Workers' Pneumoconiosis (CM–988), Report of Arterial Blood Gas Study (CM–1159), and Report of Ventilatory Study (CM–2907). This information collection is currently approved for use through August 31, 2011.

II. Review Focus: The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions: The Department of Labor seeks the approval for the extension of this currently-approved information collection in order to carry out its responsibility to administer the Black Lung Benefits Act.

Agency: Office of Workers' Compensation Programs.

Type of Review: Extension.

Title: Roentgenographic Interpretation (CM–933), Roentgenographic Quality Rereading (CM–933b), Medical History and Examination for Coal Mine Workers' Pneumoconiosis (CM–988), Report of Arterial Blood Gas Study (CM–1159), and Report of Ventilatory Study (CM–2907).

OMB Number: 1240–0023.

Agency Number: CM–933, CM–933b, CM–988, CM–1159 and CM–2907.

Affected Public: Business or other for profit, and not-for-profit institutions.

Form	Time to complete	Frequency of response	Number of respondents	Number of responses	Hours burden
CM–933	5 min	on occasion	4800	4800	400
CM–933b	3 min	on occasion	4800	4800	240
CM–988	30 min	on occasion	4800	4800	2400
CM–1159	15 min	on occasion	4800	4800	1200
CM–2907	20 min	on occasion	4800	4800	1600
Totals			24000	24000	5840

Total Respondents: 24,000.

Total Annual Responses: 24,000.

Average Time per Response: 3 minutes–30 minutes.

Estimated Total Burden Hours: 5,840.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $35,520.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 16, 2011.

Vincent Alvarez,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2011–3956 Filed 2–22–11; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Division of Federal Employees' Compensation; Proposed Extension of Existing Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs is soliciting comments concerning the proposed collection: Notice of Recurrences (CA–2a). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before April 25, 2011.

ADDRESSES: Mr. Vincent Alvarez, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0372, fax (202) 693–1447, E-mail

Alvarez.Vincent@dol.gov. Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background: The Office of Workers' Compensation Programs administers the Federal Employees' Compensation Act, (5 U.S.C. 8101, *et seq.*), which provides for continuation of pay or compensation for work related injuries or disease that result from federal employment. Regulation 20 CFR 10.104 designates form CA–2a as the form to be used to request information from claimants with previously-accepted injuries, who claim a recurrence of disability, and from their supervisors. The form requests information relating to the specific circumstances leading up to the recurrence as well as information about their employment and earnings. The information provided is used by OWCP claims examiners to determine whether a claimant has suffered a recurrence of disability related to an accepted injury and, if so, the appropriate benefits payable. This information collection is currently approved for use through May 31, 2011.

II. Review Focus: The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions: The Department of Labor seeks the approval for the extension of this currently approved information collection in order to ensure the accurate payment of benefits to current and former Federal employees with recurring work-related injuries.

Type of Review: Extension.

Agency: Office of Workers' Compensation Programs.

Title: Notice of Recurrences.

OMB Number: 1240–0009.

Agency Number: CA–2a.

Affected Public: Individuals or households.

Total Respondents: 314.

Total Annual Responses: 314.

Average Time per Response: 30 minutes.

Estimated Total Burden Hours: 157.

Frequency: Annually.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $148.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 16, 2011.

Vincent Alvarez,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2011–3957 Filed 2–22–11; 8:45 am]

BILLING CODE 4510–CH–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0013]

Proposed Generic Communications; Draft NRC Regulatory Issue Summary 2011–XX, Adequacy of Station Electric Distribution System Voltages; Reopening of Public Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Reopening of public comment period.

SUMMARY: This notice revises a notice published on January 18, 2011, in the **Federal Register** (76 FR 2924), which announced, in part, that the public comment period for the U.S. Nuclear Regulatory Commission's (NRC's) Draft Regulatory Issue Summary 2011–XX, Adequacy of Station Electric Distribution System Voltages, closes on February 17, 2011. The purpose of this notice is to reopen the public comment period on the Draft RIS for an additional 30 days to allow more time for industry to assemble comments.

DATES: Comment period expires on March 19, 2011. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2011–0013 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal Rulemaking Web site *Regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0013. Comments may be submitted electronically through this Web site. Address questions about NRC dockets to Carol Gallagher, *telephone:* 301–492–3668, *e-mail: Carol.Gallagher@nrc.gov.*

Mail comments to: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Division of Administrative Services, Office of Administration, *Mail Stop:* TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RADB at 301–492–3446.

Availability: Publicly available documents related to this notice can be accessed using any of the methods described in this section.

NRC's Public Document Room (PDR): The public may examine and have copied, for a fee, publicly available documents related to the NFS facility and license renewal at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike, Room O1–F21, Rockville, Maryland 20852–2738. Members of the public can contact the NRC's PDR reference staff by calling 1–800–397–4209, by faxing a request to 301–415–3548, or by e-mail to *pdr.resource@nrc.gov.*

NRC's Agencywide Documents Access and Management System (ADAMS): Members of the public can access the NRC's ADAMS at *http://www.nrc.gov/reading-rm/adams.html.* From this Web site, the Draft RIS (ADAMS Accession Number: ML102950322) can be obtained by entering the accession numbers provided.

FOR FURTHER INFORMATION CONTACT: Kenn A Miller, Office of Nuclear

Reactor Regulation, Division of Engineer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* 301–415–3152, *e-mail: kenneth.miller2@nrc.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 10 CFR 51.33(a), the NRC staff is making the Draft RIS available for public review and comment. The public comment period is reopened with publication of this notice and continues until March 19, 2011.

Dated at Rockville, Maryland, this 15th day of February, 2011.

For the Nuclear Regulatory Commission.

Roy Mathew,

Acting Branch Chief, Electrical Engineering Branch, Division of Engineering, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–3987 Filed 2–22–11; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Public Hearing Cancellation Notice; February 24, 2011

OPIC's Sunshine Act notice of its Public Hearing in Conjunction with each Board meeting was published in the **Federal Register** (Volume 76, Number 22, Pages 5842 and 5843) on February 2, 2011. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing scheduled for 2 PM, February 24, 2011 in conjunction with OPIC's March 10, 2011 Board of Directors meeting has been cancelled.

Contact Person for Information: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, or via e-mail at *Connie.Downs@opic.gov.*

Dated: February 17, 2011.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 2011–4103 Filed 2–18–11; 11:15 am]

BILLING CODE 3210–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, February 24, 2011 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, February 24, 2011 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: February 17, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–4078 Filed 2–18–11; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63919; File No. SR–NYSEArca–2010–116]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of the WisdomTree Asia Local Debt Fund

February 16, 2011.

I. Introduction

On December 13, 2010, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the WisdomTree Asia Local Debt Fund (f/k/a WisdomTree Asia Bond Fund) under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on January 3, 2011.[3] On February 15, 2011, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission received no comments on the proposal. This order grants approval of the proposed rule change, as amended.

II. Description of the Proposal

The Exchange proposes to list and trade shares ("Shares") of the WisdomTree Asia Local Debt Fund ("Fund") of the WisdomTree Trust ("Trust") under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Fund will be an actively managed exchange-traded fund. The Shares will be offered by the Trust, which was established as a Delaware statutory trust on December 15, 2005 and is registered with the Commission as an investment company.[5] WisdomTree Asset Management, Inc. ("WisdomTree Asset Management") is the investment adviser ("Adviser") to the Fund,[6] and Mellon Capital Management serves as sub-adviser for the Fund ("Sub-Adviser").[7] The Bank of New York Mellon is the administrator, custodian, and transfer agent for the Trust, and ALPS Distributors, Inc. serves as the distributor for the Trust.

The Fund seeks to provide investors with a high level of total return consisting of both income and capital appreciation. The Fund is designed to provide exposure to a broad range of Asian government and corporate bonds through investment in both local currency (*e.g.,* Hong Kong dollar; South Korean won) and U.S. dollar-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 63609 (December 27, 2010), 76 FR 194 ("Notice").

[4] In Amendment No. 1, the Exchange modified the name of the Fund from "WisdomTree Asia Bond Fund" to "WisdomTree Asia Local Debt Fund," updated references to the amended Registration Statement (as defined herein), and clarified that the Fund intends to invest in issuers in Australia and New Zealand. Because such modifications are either technical in nature or clarifications, the amendment does not require notice and comment.

[5] The Fund has filed a registration statement on Form N–1A ("Registration Statement") with the Commission. *See* Post-Effective Amendment No. 42 to Registration Statement on Form N–1A for the Trust, dated January 24, 2011 (File Nos. 333–132380 and 811–21864).

[6] WisdomTree Investments, Inc. is the parent company of WisdomTree Asset Management.

[7] The Sub-Adviser is responsible for day-to-day management of the Fund and, as such, typically makes all decisions with respect to portfolio holdings. The Adviser has ongoing oversight responsibility.

denominated Fixed Income Securities.[8] The Fund seeks to achieve its investment objective through direct and indirect investments in Fixed Income Securities issued by governments and corporations in Asian countries and intends to focus on the developing/emerging market economies in Asia, primarily China, Hong Kong, India, Indonesia, South Korea, Malaysia, the Philippines, Singapore, Taiwan, and Thailand. While the Fund is permitted to invest in developed market economies, this is not a focus of the Fund. However, the Fund intends to invest in issuers in Australia and New Zealand.

The Fund intends to invest at least 70% of its net assets in Fixed Income Securities. The Fund expects to invest up to 20% of its net assets in Asian corporate bonds. The Fund will invest only in corporate bonds that the Adviser or Sub-Adviser deems to be sufficiently liquid. Generally, a corporate bond must have $200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment. Economic and other conditions in Asia may, from time to time, lead to a decrease in the average par amount outstanding of bond issuances. Therefore, although the Fund does not intend to do so, the Fund may invest up to 5% of its net assets in corporate bonds with less than $200 million par amount outstanding if (i) the Adviser or Sub-Adviser deems such security to be sufficiently liquid based on its analysis of the market for such security (based on, for example, broker-dealer quotations or its analysis of the trading history of the security or the trading history of other securities issued by the issuer), (ii) such investment is consistent with the Fund's goal of providing exposure to a broad range of Asian government and corporate bonds, and (iii) such investment is deemed by the Adviser or Sub-Adviser to be in the best interest of the Fund. The Fund will hold Fixed Income Securities of at least 13 non-affiliated issuers.

The Fund is designed to provide a broad-based, representative exposure to Asian government and corporate bonds and therefore will invest in both investment grade and non-investment grade securities in a manner designed to provide this exposure. The Fund expects that it will have 75% or more of its assets invested in investment grade securities, and no more than 25% of its assets invested in non-investment grade securities. Because the Fund is designed to provide exposure to a broad range of Asian government and corporate bonds, and because the debt ratings of the Asian governments and those corporate issuers will change from time to time, the exact percentage of the Fund's investments in investment grade and non-investment grade securities will change from time to time in response to economic events and changes to the credit ratings of the Asian government and corporate issuers. Within the non-investment grade category, some issuers and instruments are considered to be of lower credit quality and at higher risk of default. In order to limit its exposure to these more speculative credits, the Fund will not invest more than 15% of its assets in securities rated B or below by Moody's, or equivalently rated by S&P or Fitch. The Fund does not intend to invest in unrated securities. However, it may do so to a limited extent, such as where a rated security becomes unrated, if such security is, determined by the Adviser and Sub-Adviser to be of comparable quality. In determining whether a security is of "comparable quality," the Adviser and Sub-Adviser will consider, for example, whether the issuer of the security has issued other rated securities. The Fund will not invest in non-U.S. equity securities.

The Fund intends to invest in Money Market Securities in order to help manage cash flows in and out of the Fund, such as in connection with payment of dividends or expenses, and to satisfy margin requirements, to provide collateral or to otherwise back investments in derivative instruments. For these purposes, Money Market Securities include: short-term, high-quality obligations issued or guaranteed by the U.S. Treasury or the agencies or instrumentalities of the U.S. government; short-term, high-quality securities issued or guaranteed by non-U.S. governments, agencies and instrumentalities; repurchase agreements backed by U.S. government securities; money market mutual funds; and deposits and other obligations of U.S. and non-U.S. banks and financial institutions. All Money Market Securities acquired by the Fund will be rated investment grade, except that the Fund may invest in unrated Money Market Securities that are deemed by the Adviser or Sub-Adviser to be of comparable quality to money market securities rated investment grade.

The Fund may use derivative instruments as part of its investment strategies. Examples of derivative instruments include listed futures contracts,[9] forward currency contracts, non-deliverable forward currency contracts, currency and interest rate swaps, currency options, options on futures contracts, swap agreements and credit-linked notes.[10] The Fund's use of derivative instruments (other than credit-linked notes) will be collateralized or otherwise backed by investments in short term, high-quality U.S. money market securities. The Fund expects that no more than 30% of the value of the Fund's net assets will be invested in derivative instruments. Such investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

The Fund may invest in the securities of other investment companies (including money market funds and exchange-traded funds). The Fund may invest up to an aggregate amount of 10% of its net assets in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets.

Additional details regarding the Trust and the Fund, the investment objective and strategies, creations and redemptions of the Shares, investment risks, net asset value ("NAV") calculation, the dissemination of key values and availability of information about the underlying assets, trading halts, applicable trading rules, surveillance, and the Information Bulletin, among other things, can be found in the Notice and/or the Registration Statement, as applicable.[11]

III. Discussion and Commission's Findings

After careful consideration, the Commission finds that the proposed rule change to list and trade the Shares of the Fund is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] In particular, the Commission finds that the proposed rule change is consistent

[8] Fixed Income Securities include bonds, notes or other debt obligations, such as government or corporate bonds, denominated in local currencies or U.S. dollars, as well as issues denominated in Asian local currencies that are issued by "supranational issuers," such as the European Investment Bank, International Bank for Reconstruction and Development, and the International Finance Corporation, as well as development agencies supported by other national governments.

[9] The listed futures contracts in which the Fund will invest may be listed on exchanges either in the U.S. or in either Hong Kong or Singapore.

[10] The Fund's investments in credit-linked notes will be limited to notes providing exposure to Asian Fixed Income Securities. The Fund's overall investment in credit-linked notes will not exceed 25% of the Fund's assets.

[11] *See supra* notes 3 and 5.

[12] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

with the requirements of Section 6(b)(5) of the Act,[13] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Commission notes that the Shares and Fund must comply with the requirements of NYSE Arca Equities Rule 8.600, among other Exchange rules, to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is also consistent with Section 11A(a)(1)(C)(iii) of the Act,[14] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information regarding the Shares will be available via the Consolidated Tape Association's high-speed line. On each business day before commencement of trading in the Shares in the Core Trading Session[15] on the Exchange, the Trust will disclose on its Web site the identities and quantities of the portfolio of securities and other assets ("Disclosed Portfolio") held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.[16] The Disclosed Portfolio will include, as applicable, the names, quantity, percentage weighting, and market value of Fixed Income Securities and other assets held by the Fund and the characteristics of such assets. The NAV of the Fund's Shares generally is calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange, generally 4:00 p.m. Eastern time. In addition, an estimated value that reflects an estimated intraday value of the Fund's portfolio, defined in NYSE Arca Equities Rule 8.600 as the "Portfolio Indicative Value," will also be disseminated. The Portfolio Indicative Value will be based upon the current value for the components of the Disclosed Portfolio and will be updated and disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session on the Exchange. In addition, during hours when the markets for securities in the Fund's portfolio are closed, the Portfolio Indicative Value will be updated at least every 15 seconds during the Core Trading Session to reflect currency exchange fluctuations. Intra-day and end-of-day prices for the Fixed Income Securities, Money Market Securities, and derivative instruments held by the Fund are readily available through major market data providers and broker-dealers. The Web site for the Fund (*http://www.wisdomtree.com*) will include a form of the prospectus and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[17] If the Exchange becomes aware that the NAV or Disclosed Portfolio with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV or Disclosed Portfolio is available to all market participants. Further, the Exchange may halt trading during the day in which an interruption to the dissemination of the Portfolio Indicative Value occurs. If the interruption to the dissemination of the Portfolio Indicative Value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[18] The Exchange also represents that the Sub-Adviser, which is affiliated with multiple broker-dealers, has implemented a "fire wall" with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, Sub-Adviser personnel who make decisions regarding the Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund's portfolio.[19] Finally, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.[20]

The Exchange has represented that the Shares are deemed equity securities subject to the Exchange's rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including the following:

(1) The Shares will be subject to NYSE Arca Equities Rule 8.600, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[15] The Core Trading Session is 9:30 a.m. to 4:00 p.m. Eastern time.

[16] Under accounting procedures followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[17] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

[18] *See* NYSE Arca Equities Rule 8.600(d)(2)(D). Trading in the Shares may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

[19] *See* Commentary .06 to NYSE Arca Equities Rule 8.600. In the event (a) the Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, they will be required to implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio.

[20] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

(6) For initial and/or continued listing, the Shares must be in compliance with Rule 10A–3 under the Act.[21]

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–NYSEArca–2010–116), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–3984 Filed 2–22–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63918; File No. SR–C2–2011–005]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Adopt Supplemental Rule (a) to Chapter 4 Relating to Proxy Voting

February 16, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 10, 2011, the C2 Options Exchange, Incorporated ("Exchange" or "C2") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Supplemental Rule (a), *Proxy Voting,* to C2 Chapter 4 in accordance with provisions of Section 957 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 957 of the Dodd-Frank Act adopted new Section 6(b)(10) of the Act,[3] which requires the rules of each national securities exchange to prohibit any member that is not the beneficial owner of a security registered under Section 12 of the Act[4] from granting a proxy to vote the security in connection with certain shareholder votes, unless the beneficial owner of the security has instructed the member to vote the proxy in accordance with the voting instructions of the beneficial owner. The shareholder votes covered by Section 957 include any vote with respect to (i) the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940 (the "Investment Company Act"), (ii) executive compensation, or (iii) any other significant matter, as determined by the Commission, by rule.[5]

Accordingly, in order to carryout the requirements of Section 957 of the Dodd-Frank Act, the Exchange is proposing to adopt Supplemental Rule (a) to C2 Chapter 4. Paragraph (1) of the proposed rule provides that a C2 Permit Holder is prohibited from giving a proxy to vote stock that is registered in its name, unless: (i) Such Permit Holder is the beneficial owner of such stock; (ii) pursuant to the written instructions of the beneficial owner; or (iii) pursuant to the rules of any national securities exchange or association of which it is a member provided that the records of the Permit Holder clearly indicate the procedure it is following. The Exchange is proposing to adopt these provisions because other national securities exchanges and associations do allow proxy voting under certain limited circumstances while the current Exchange Rules are silent on such matters. Therefore, a C2 Permit Holder that is also a member of another national securities exchange or association may vote shares held for a customer when allowed under its membership at another national securities exchange or association, provided that the records of the C2 Permit Holder clearly indicate the procedure it is following.

Notwithstanding the above, paragraph (2) of the proposed rule provides that a C2 Permit Holder that is not the beneficial owner of a security registered under Section 12 of the Act is prohibited from granting a proxy to vote the security in connection with a shareholder vote on the election of a member of the board of directors of an issuer (except for a vote with respect to uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act), executive compensation, or any other significant matter, as determined by the Commission, by rule, unless the beneficial owner of the security has instructed the Permit Holder to vote the proxy in accordance with the voting instructions of the beneficial owner.

[21] *See* 17 CFR 240.10A–3.

[22] 15 U.S.C. 78f(b)(2).

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b)(10).

[4] 15 U.S.C. 78l.

[5] 15 U.S.C. 78f(b)(10)(B).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act [6] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(10) [8] requirements that all national securities exchanges adopt rules prohibiting members from voting, without receiving instructions from the beneficial owner of shares, on the election of a member of a board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, by rule. The Exchange also believes that the proposed rule changes is consistent with the Section 6(b)(5) requirements that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange is adopting this proposed rule change to comply with the requirements of Section 957 of the Dodd-Frank Act, and therefore believes the proposed rule change to be consistent with the Act, particularly with respect to the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–C2–2011–005 on the subject line.

Paper Comments

Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2011–005. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2011–005 and should be submitted on or before March 16, 2011.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

In its filing, C2 requested that the Commission approve the proposal on an accelerated basis so that the Exchange could immediately comply with the requirements imposed by the Dodd-Frank Act, and because the proposed rule text is based upon International Securities Exchange ("ISE") Rule 421.[9] After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10]

The Commission believes that proposed Supplemental Rule (a) to Chapter 4 is consistent with Section 6(b)(5) [11] of the Act, which provides, among other things, that the rules of the Exchange must be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Under proposed Supplemental Rule (a)(1), a Permit Holder shall be prohibited from voting uninstructed shares unless (1) that Permit Holder is the beneficial owner of the stock; (2) pursuant to the written instructions of the beneficial owner; or (3) pursuant to the rules of any national securities exchange or association of which it is also a member, provided that the Permit Holder's records clearly indicate the procedure it is following. This provision is based upon ISE Rule 421, which was previously approved by the Commission.[12] The Commission notes that the proposed change will provide clarity to C2 Permit Holders going forward on whether broker discretionary voting is permitted by C2 Permit Holders under limited circumstances when the Permit Holder is also a member of another national securities exchange that permits broker discretionary voting. In approving this portion of the C2 proposal, the Commission notes that Supplemental Rule (a)(1) is consistent with the approach taken under the rules of other national securities exchanges or national securities association, and for C2 Permit Holders who are not also members of another national securities exchange prohibits broker discretionary voting on any matter, consistent with

[6] 15 U.S.C. 78a *et seq.*

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(10).

[9] *See* Securities Exchange Act Release 63139 (October 20, 2010), 75 FR 65680 (October 26. 2010).

[10] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] *See supra* note 9. *See also* NYSE Arca Rule 9.4 and FINRA Rule 2251, which are similar and previously approved by the Commission. *See* Securities Exchange Act Release No. 48735 (October 31, 2003), 68 FR 63173 (November 7, 2003) (SR–PCX–2003–50); 61052 (November 23, 2009), 74 FR 62857 (December 1, 2009) (SR–FINRA–2009–066) (finding that the proposed rule change was consistent with the Act because the Rule "will continue to provide FINRA members with guidance on the forwarding of proxy and other issuer-related materials.").

investor protection and the public interest.

The Commission believes that proposed Supplemental Rule (a)(2) is consistent with Section 6(b)(10) [13] of the Act, which requires that national securities exchanges adopt rules prohibiting members that are not beneficial holders of a security from voting uninstructed proxies with respect to the election of a member of the board of directors of an issuer (except for uncontested elections of directors for companies registered under the Investment Company Act), executive compensation, or any other significant matter, as determined by the Commission by rule.

The Commission believes that proposed Supplemental Rule (a)(2) is consistent with Section 6(b)(10) of the Act because it adopts revisions that comply with that section. As noted in the accompanying Senate Report, Section 957, which enacted Section 6(b)(10), reflects the principle that "final vote tallies should reflect the wishes of the beneficial owners of the stock and not be affected by the wishes of the broker that holds the shares." [14] The proposed rule change will make C2 compliant with the new requirements of Section 6(b)(10) by specifically prohibiting, in C2's rule language, broker-dealers, who are not beneficial owners of a security, from voting uninstructed shares in connection with a shareholder vote on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission by rule, unless the member receives voting instructions from the beneficial owner of the shares.[15]

The Commission also believes that proposed Supplemental Rule (a)(2) is consistent with Section 6(b)(5) [16] of the Act, which provides, among other things, that the rules of the Exchange must be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the rule assures that shareholder votes on the election of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940) and on executive compensation matters are made by those with an economic interest in the company, rather than by a broker that has no such economic interest, which should enhance corporate governance and accountability to shareholders.[17]

Based on the above, the Commission finds that the C2 proposal will further the purposes of Sections 6(b)(5) and 6(b)(10) of the Act because it should enhance corporate accountability to shareholders while also serving to fulfill the Congressional intent in adopting Section 6(b)(10) of the Act.

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,[18] for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. The Commission believes that good cause exists to grant accelerated approval to proposed Supplemental Rule (a)(1), because this proposed rule will conform the C2 rule to ISE Rule 421, NYSE Arca Rule 9.4 and FINRA Rule 2251, which were published for public comment in the **Federal Register** and approved by the Commission, and for which no comments were received.[19] Because proposed Supplemental Rule (a)(1) is substantially similar to the ISE, NYSE Arca and FINRA rules, it raises no new regulatory issues.

The Commission also believes that good cause exists to grant accelerated approval to proposed Supplemental Rule (a)(2), which conforms the C2 rules to the requirements of Section 6(b)(10) of the Act. Section 6(b)(10) of the Act, enacted under Section 957 of the Dodd-Frank Act, does not provide for a transition phase, and requires rules of national securities exchanges to prohibit broker voting on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission by rule. The Commission believes that good cause exists to grant accelerated approval to proposed Supplemental Rule (a)(2), because it will conform the C2 rule to the requirements of Section 6(b)(10) of the Act.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–C2–2011–005) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–3983 Filed 2–22–11; 8:45 am]

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[13] 15 U.S.C. 78f(b)(10).

[14] *See* S. Rep. No. 111–176, at 136 (2010).

[15] The Commission has not, to date, adopted rules concerning other significant matters where uninstructed broker votes should be prohibited, although it may do so in the future. Should the Commission adopt such rules, we would expect C2 to adopt coordinating rules promptly to comply with the statute.

[16] 15 U.S.C. 78f(b)(5).

[17] As the Commission stated in approving NYSE rules prohibiting broker voting in the election of directors, having those with an economic interest in the company vote the shares, rather than the broker who has no such economic interest, furthers the goal of enfranchising shareholders. *See* Securities Exchange Act Release No. 60215 (July 1, 2009), 74 FR 33293 (July 10, 2009) (SR–NYSE–2006–92).

[18] 15 U.S.C. 78s(b)(2).

[19] *See supra* notes 9 and 12.

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63917; File No. SR–CBOE–2011–017]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Amend an Exchange Rule Relating to Giving Proxies

February 16, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 10, 2011 the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its proxy voting rules in accordance with provisions of Section 957 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 957 of the Dodd-Frank Act adopted new Section 6(b)(10) of the Act,[3] which requires the rules of each national securities exchange to prohibit any member that is not the beneficial owner of a security registered under Section 12 of the Act[4] from granting a proxy to vote the security in connection with certain shareholder votes, unless the beneficial owner of the security has instructed the member to vote the proxy in accordance with the voting instructions of the beneficial owner. The shareholder votes covered by Section 957 include any vote with respect to (i) the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940 (the "Investment Company Act"), (ii) executive compensation, or (iii) any other significant matter, as determined by the Commission, by rule.[5]

Accordingly, in order to carry out the requirements of Section 957 of the Dodd-Frank Act, the Exchange is proposing to amend CBOE Rule 31.85, *Giving Proxies by TPH Organizations,* which governs when Trading Permit Holder Organizations ("TPH Organizations") may and may not give a proxy to vote stock without instructions from the beneficial owner of the shares. First, Item 19 of CBOE Rule 31.85(b) already prohibits TPH Organizations from giving a proxy to vote shares without instructions from beneficial owners when the matter to be voted upon is the election of directors (other than in the case of an issuer registered under the Investment Company Act, provided the matter is not the subject of a counter-solicitation). Therefore the Exchange is proposing to simply amend Item 19 so that the text is consistent with the language in Section 6(b)(10)(B) of the Act.[6]

Second, the Exchange proposes to add new Item 21 (and related commentary) to CBOE Rule 31.85(b) to provide that a TPH Organization may not give a proxy or authorize a proxy to vote without instructions from beneficial owners when the matter to be voted upon relates to executive compensation. The proposed commentary to Item 21 would clarify that a matter relating to executive compensation would include, among other things, the items referred to in Section 14A of the Act (added by Section 951 of the Dodd-Frank Act), including (i) an advisory vote to approve the compensation of executives, (ii) a vote on whether to hold such an advisory vote every one, two or three years, and (iii) an advisory vote to approve any type of compensation (whether present, deferred, or contingent) that is based on or otherwise relates to an acquisition, merger, consolidation, sale or other disposition of all or substantially all of the assets of an issuer and the aggregate total of all such compensation that may (and the conditions upon which it may) be paid or become payable to or on behalf of an executive officer. In addition, a TPH Organization may not give or authorize a proxy to vote without instructions on a matter relating to executive compensation, even if such matter would otherwise qualify for an exception from the requirements of Item 12, Item 13 or any other Item under CBOE Rule 31.85. Any vote on these or similar executive compensation-related matters would be subject to the requirements of CBOE Rule 31.85, as amended.[7]

Third, the Exchange proposes to add new Item 22 to Rule 31.85(b) to provide that a TPH Organization may not give a proxy or authorize a proxy to vote without instructions from beneficial owners when the matter to be voted upon involves any other significant matter, as determined by the Commission, by rule.[8]

Fourth, the Exchange is proposing to add the words "or authorize" in certain places throughout CBOE Rule 31.85 to clarify that the rule includes not only the giving of a proxy but also the authorization of such proxy.

Finally, the Exchange is proposing to amend Appendix A to the rules of the CBOE Stock Exchange, LLC ("CBSX," the CBOE's stock trading facility). Appendix A lists the rules contained in Chapters 1 through 29 of the Exchange Rules that are applicable to the trading of equity securities on CBSX. The Exchange is proposing to amend Appendix A to include a cross reference to CBOE Rule 31.85 in order to make clear that CBOE Rule 31.85 regarding the giving of proxies by TPH Organizations applies to CBSX TPH Organizations as well as CBOE TPH Organizations.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act[9] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(10)[11] requirements that all national securities exchanges adopt rules prohibiting members from voting, without receiving instructions from the beneficial owner of shares, on the election of a member of a board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, by rule. The Exchange also believes the proposed rule change is consistent with the Section 6(b)(5)[12] requirements that an exchange have

[3] 15 U.S.C. 78f(b)(10).

[4] 15 U.S.C. 78l.

[5] 15 U.S.C. 78f(b)(10)(B).

[6] *See* 15 U.S.C. 78f(b)(10)(B).

[7] The Exchange is also proposing to add cross-referencing commentary related to new Item 21 in Items 12 and 13. The Exchange is also proposing a non-substantive change to include a heading for the commentary to Item 20 so there is consistent formatting of the various commentaries that appear throughout the rule.

[8] The Exchange notes that the Commission has not at this time identified other significant matters with respect to which TPH Organizations should be prohibited from voting uninstructed shares.

[9] 15 U.S.C. 78a *et seq.*

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(10).

[12] 15 U.S.C. 78f(b)(5).

rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange is adopting the proposed rule changes to comply with the requirements of Section 957 of the Dodd-Frank Act, and therefore believes the proposed rule changes to be consistent with Section 6(b)(5) of the Act, particularly with respect to the protection of investors and the public interest. Finally, the Exchange believes the proposed changes to Appendix A of the CBSX Rules to incorporate a cross reference to CBOE Rule 31.85 is consistent with Section 6(b)(5) of the Act, particularly with respect to the protection of investors and the public interest, because the changes would make it clear that CBOE Rule 31.85 (regarding the giving of proxies by TPH Organizations) applies to CBSX TPH Organizations as well as CBOE TPH Organizations.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2011–017 on the subject line.

Paper Comments

Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2011–017. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2011–017 and should be submitted on or before March 16, 2011.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

In its filing, the Exchange requested that the Commission approve the proposal on an accelerated basis. The Exchange stated that it believed good cause existed to grant accelerated approval because Section 957 of the Dodd-Frank Act does not provide for a transition period and because the proposed rule text is based upon New York Stock Exchange ("NYSE") Rule 452.[13]

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] The Commission believes that the proposal is consistent with Section 6(b)(10)[15] of the Act, which requires that national securities exchanges adopt rules prohibiting members that are not beneficial holders of a security from voting uninstructed proxies with respect to the election of a member of the board of directors of an issuer (except for uncontested elections of directors for companies registered under the Investment Company Act), executive compensation, or any other significant matter, as determined by the Commission, by rule. The Commission also believes that the proposal is consistent with Section 6(b)(5)[16] of the Act, which provides, among other things, that the rules of the Exchange must be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposal is consistent with Section 6(b)(10) of the Act because it adopts revisions that comply with that section. As noted in the accompanying Senate Report, Section 957, which adopts Section 6(b)(10), reflects the principle that "final vote tallies should reflect the wishes of the beneficial owners of the stock and not be affected by the wishes of the broker that holds the shares."[17] The proposed rule change will make CBOE rules compliant with the new requirements of Section 6(b)(10) by prohibiting broker-dealers, who are not beneficial owners of a security, from voting uninstructed shares with respect to any matter on executive compensation or any other significant matter, as determined by the Commission, by rule.[18]

The Commission believes that the proposal is consistent with Section

[13] *See* Securities Exchange Act Release 62874 (September 9, 2010), 75 FR 56152 (September 15, 2010).

[14] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(10).

[16] 15 U.S.C. 78f(b)(5).

[17] *See* S. Rep. No. 111–176, at 136 (2010).

[18] As noted above, Section 6(b)(10) also prohibits broker voting for director elections, except for uncontested director elections of registered investment companies. The Commission notes that the Exchange already prohibits broker voting in director elections except for uncontested director elections for registered investment companies and is merely proposing to amend Item 19 so that the text is consistent with the language in Section 6(b)(10) of the Act. *See* CBOE Rule 31.85(b)(19). As to other matters, as determined by the Commission, by rule, the Commission has not, to date, adopted rules concerning other significant matters where uninstructed broker votes should be prohibited, although it may do so in the future. Should the Commission adopt such rules, we would expect the Exchange to adopt coordinating rules promptly to comply with the statute.

6(b)(5) of the Act because the proposal will further investor protection and the public interest by assuring that shareholder votes on executive compensation matters are made by those with an economic interest in the company, rather than by a broker that has no such economic interest, which should enhance corporate governance and accountability to shareholders.[19]

The Commission notes that the CBOE's new rule prohibiting uninstructed broker votes on executive compensation covers the specific items identified in Section 951 of the Dodd-Frank Act, as well as any other matter concerning executive compensation, and has been drafted broadly to reflect the requirements of Section 6(b)(10) of the Act. The proposed rule language also specifically states that a broker vote on any executive compensation matter would not be permitted even if it would otherwise qualify for an exception from any item under Rule 31.85. The Commission believes this provision will make clear that any past practice or interpretation that may have permitted a broker vote on an executive compensation matter, under existing rules, will no longer be applicable and is superseded by the newly adopted provisions.

Finally, the Commission notes that the changes to reflect (i) that the CBOE rules prohibit not only the giving of a proxy, but also the authorization of the proxy and (ii) that CBOE Rule 31.85 regarding the giving of proxies by TPH Organizations applies to CBSX TPH Organizations as well as CBOE TPH Organization, should help to clarify the intent of the CBOE proxy rules and is consistent with the requirements of Section 6 of the Act.

Based on the above, the Commission believes that the Exchange's proposal will further the purposes of Sections 6(b)(5) and 6(b)(10) of the Act because it should enhance corporate accountability to shareholders. The rule filing should also serve to fulfill the Congressional intent in adopting Section 6(b)(10) of the Act.

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,[20] for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. As noted above, Section 6(b)(10) of the Act, enacted under Section 957 of the Dodd-Frank Act, does not provide for a transition phase, and requires rules of national securities exchanges to prohibit, among other things, broker voting on executive compensation. The Commission believes that good cause exists to grant accelerated approval to the Exchange's proposal, because it will conform CBOE Rule 31.85 to the requirements of Section 6(b)(10) of the Act. Moreover, the Commission notes that the proposed changes are based on NYSE Rule 452.[21]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–CBOE–2011–017) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–3982 Filed 2–22–11; 8:45 am]

BILLING CODE 8011–01–P

[19] As the Commission stated in approving NYSE rules prohibiting broker voting in the election of directors, having those with an economic interest in the company vote the shares, rather than the broker who has no such economic interest, furthers the goal of enfranchising shareholders. *See* Securities Exchange Act Release No. 60215 (July 1, 2009), 74 FR 33293 (July 10, 2009) (SR–NYSE–2006–92).

[20] 15 U.S.C. 78s(b)(2).

[21] *See* note 13, *supra.*

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12468 and #12469]

Utah Disaster #UT–00009

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Utah (FEMA–1955–DR), dated 02/11/2011.

Incident: Severe Winter Storms and Flooding.

Incident Period: 12/20/2010 through 12/24/2010.

Effective Date: 02/11/2011.

Physical Loan Application Deadline Date: 04/12/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 11/14/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 02/11/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Kane, Washington.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ..	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12468B and for economic injury is 12469B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Roger B. Garland,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2011–3947 Filed 2–22–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12465 and #12466]

New Jersey Disaster Number NJ–00019

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of NEW JERSEY (FEMA—1954—DR), dated 02/04/2011.

Incident: Severe Winter Storm and Snowstorm.

Incident Period: 12/26/2010 through 12/27/2010.

Effective Date: 02/11/2011.

Physical Loan Application Deadline Date: 04/05/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 11/04/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration,

409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of NEW JERSEY, dated 02/04/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Atlantic, Cumberland.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Roger B. Garland,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2011–3949 Filed 2–22–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Office of International Trade; State Trade and Export Promotion (STEP) Grant Program

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of grant opportunity to States.

SUMMARY: The SBA plans to issue Program Announcement No. OIT–STEP–2011–01 to invite the States, the District of Columbia and the U.S. Territories to apply for a STEP grant to carry out export promotion programs that assist eligible small business concerns to become exporters and increase the value of small business U.S. exports. STEP grants will be awarded on a competitive basis. The funding instrument is a cooperative agreement. A state may not submit more than 1 application for a grant under the program. Awards will be made for a project period of 12 months from the date of award. A state may apply each Federal fiscal year that Congressional appropriations are made available throughout the 3-year term of the program.

DATES: Program Announcement No. OIT–STEP–2011–01 will be posted on *http://www.Grants.gov* on March 1, 2011. The application period will be March 1, 2011 through April 26, 2011. Awards for the first year of the grant program will be issued in the summer of 2011.

Eligible Applicants: Each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa.

SUPPLEMENTARY INFORMATION: The Small Business Jobs Act of 2010 authorizes the U.S. Small Business Administration to establish a 3-year pilot program, known as the State Trade and Export Promotion (STEP) Grant Program, to make grants to States to assist eligible small business concerns. The objective of the STEP Grant Program is to increase the number of small businesses that are exporting, and increase the value of exports by small businesses in the States.

The applicants' proposed activities for small businesses may include:

- Participation in a foreign trade mission,
- A foreign market sales trip,
- A subscription to services provided by the Department of Commerce,
- The payment of website foreign language translation fees,
- The design of international marketing products or campaigns,
- An export trade show exhibit,
- Participation in training workshops,
- Any other export initiative deemed appropriate by SBA's Associate Administrator of the Office of International Trade (OIT) that does not duplicate the services of other SBA resource partners. These other export initiatives may include, but are not limited to, projects that increase direct and indirect supply chain exporting; export match-making events; formation of export outreach teams composed of State, local, Federal, *etc.* personnel; sector-specific projects unique to the State's environment/geography/international relationships; projects to develop and use technology for exporting; reverse trade missions; and projects to increase lender readiness for financing export trade.

In making grants, SBA may give priority to an application that focuses on socially and economically disadvantaged small businesses, women-owned small businesses, veteran and service-connected disabled veteran-owned small businesses, or rural small businesses as part of an export promotion program.

State recipients are encouraged to work collaboratively with the SBA District Offices, SBA regional managers at U.S. Export Assistance Centers (USEAC) and SBA resource partners (i.e., Women's Business Centers (WBCs), Small Business Trade Development Centers (SBTDC), Small Business Development Centers (SBDC), Veterans Business Outreach Centers (VBOC) and SCORE) to coordinate their efforts to promote trade and avoid duplication. Also, the States are encouraged to fully utilize the resources of other Federal, state and local government agencies, academic and private-sector programs that aid small businesses in order to provide seamless, non-duplicative export promotion assistance.

SBA expects to issue awards under this Program Announcement totaling the full FY 2011 appropriated amount of $30,000,000. Individual State project award amounts will vary based on the State's proposed project plan and budget. The Federal share of project costs for grants to the 10 states with the highest number of exporters that are small business concerns will not exceed 40% of the $30 million appropriation. The other 60% will be reserved for the remaining States. The States with the highest number of small business exporters will be determined based on the latest data available from the Department of Commerce.

The Federal share of project cost for a State that has a high export volume will be 65%. The Federal share of project cost for a State that does not have a high export volume will be 75%. (The Associate Administrator for the SBA Office of International Trade will determine which States have high export volume). The State must match the remainder of project cost. The match must be comprised of not less than 50% cash and not more than 50% of indirect costs and in-kind contributions. Matching funds may not be derived from any Federal program.

FOR FURTHER INFORMATION CONTACT: E-mail questions about the STEP Grant Program to *STEP@sba.gov.*

Dated: February 17, 2011.

Luz Hopewell,

Acting Associate Administrator, Office of International Trade.

[FR Doc. 2011–4009 Filed 2–22–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 7344; OMB Control Number 1405–0134]

60-Day Notice of Proposed Information Collection: DS–157, Supplemental Nonimmigrant Visa Application

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

• *Title of Information Collection:* Supplemental Nonimmigrant Visa Application.
• *OMB Control Number:* 1405–0134.
• *Type of Request:* Extension of a Currently Approved Collection.
• *Originating Office:* Bureau of Consular Affairs, Department of State (CA/VO).
• *Form Number:* DS–157.
• *Respondents:* Nonimmigrant visa applicants legally required to provide additional security and background information.
• *Estimated Number of Respondents:* 150,000.
• *Estimated Number of Responses:* 150,000.
• *Average Hours Per Response:* 1 hour.
• *Total Estimated Burden:* 150,000.
• *Frequency:* Once per respondent.
• *Obligation to Respond:* Required to Obtain or Retain a Benefit.

DATES: The Department will accept comments from the public up to 60 days from February 23, 2011.

ADDRESSES: You may submit comments by any of the following methods:
• *E-mail: ClausSR@state.gov.*
• *Mail (paper, disk, or CD–ROM submissions):* Chief, Legislation and Regulation Division, Visa Services—DS–157 Reauthorization, 2401 E. Street, NW., Washington, DC 20520–30106.
• *Fax:* (202) 663–3898.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Stefanie Claus of Visa Services, U.S. Department of State, 2401 E. Street, NW., L–603, Washington, DC 20520, who may be reached at (202) 663–2910.

SUPPLEMENTARY INFORMATION:

We are soliciting public comments to permit the Department to:
• Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
• Enhance the quality, utility, and clarity of the information to be collected.
• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

Applicants legally required to provide additional security and background information who do not use the Online Application for Nonimmigrant Visa (DS–160) will supplement the Application for Nonimmigrant Visa (DS–156) by using this form to apply for a nonimmigrant visa to enter the United States. U.S. embassies and consulates will use the data provided in the Form DS–157 in conjunction with the DS–156 to help determine whether aliens are eligible to receive nonimmigrant visas.

Methodology

The DS–157 is completed by applicants online or, in exceptional circumstances, in hard copy at the time of the interview.

Dated: February 11, 2011.

David T. Donahue,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2011–4051 Filed 2–22–11; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 7343; OMB 1405–0180]

60-Day Notice of Proposed Information Collection: DS–7652, U.S. National Commission for UNESCO Laura W. Bush Traveling Fellowship

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.
• *Title of Information Collection:* U.S. National Commission for UNESCO Laura W. Bush Traveling Fellowship.
• *OMB Control Number:* 1405–0180.
• *Type of Request:* Extension of a currently approved collection.
• *Originating Office:* Bureau of International Organization Affairs, Office of UNESCO Affairs, Executive Secretariat U.S. National Commission for UNESCO (IO/UNESCO).
• *Form Number:* DS–7646.
• *Respondents:* U.S. college and university students applying for a Fellowship.
• *Estimated Number of Respondents:* 100.
• *Estimated Number of Responses:* 100.
• *Average Hours Per Response:* 10.
• *Total Estimated Burden:* 1,000 hours.
• *Frequency:* On occasion.
• *Obligation to Respond:* Required to Obtain or Retain a Benefit.

DATES: The Department will accept comments from the public up to 60 days from February 23, 2011.

ADDRESSES: Direct comments and questions to Eric Woodard, Executive Director to the U.S. National Commission for UNESCO at the Department of State, who may be reached at 202–663–0024. You may submit comments by any of the following methods:
• *E-mail: WoodardEW@state.gov.*
• *Mail (paper, disk, or CD–ROM submissions):* Eric Woodard, Office of UNESCO Affairs, Department of State, 2121 Virginia Avenue, NW., #6200, Washington, DC 20037.
• *Fax:* 202–663–0035.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information, collection, details regarding applying for this privately funded fellowship, and supporting documents from Eric Woodard, Executive Director, U.S. National Commission for UNESCO, who may be reached at 202–663–0024 or at *WoodardEW@state.gov.*

SUPPLEMENTARY INFORMATION:

We are soliciting public comments to permit the Department to:
• Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
• Enhance the quality, utility, and clarity of the information to be collected.
• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

Fellowship applicants, U.S. citizen students at U.S. colleges and universities, will submit descriptions of self-designed proposals for brief travel abroad to conduct work that is consistent with UNESCO's substantive mandate to contribute to peace and security by promoting collaboration among nations through education, the sciences, culture, and communications in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the

peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations. The fellowship is funded through private donations. The information will be reviewed for the purpose of identifying the most meritorious proposals, as measured against the published evaluation criteria.

Methodology

The U.S. Department of State, Bureau of International Organization Affairs, Office of UNESCO Affairs, Executive Secretariat U.S. National Commission for UNESCO (IO/UNESCO) will collect this information via electronic submission.

Dated: February 14, 2011.

Eric Woodard,

Executive Director, U.S. National Commission for UNESCO, Bureau of International Organization Affairs, U.S. Department of State.

[FR Doc. 2011–4054 Filed 2–22–11; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF STATE

[Public Notice: 7342; OMB Control Number 1405–0135]

60-Day Notice of Proposed Information Collection: DS–3035, J–1 Visa Waiver Recommendation Application

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* J–1 Visa Waiver Recommendation Application.
- *OMB Control Number:* 1405–0135.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Department of State (CA/VO).
- *Form Number:* DS–3035.
- *Respondents:* J–1 visa holders applying for a waiver of the two-year foreign residence requirement.
- *Estimated Number of Respondents:* 10,000.
- *Estimated Number of Responses:* 10,000.
- *Average Hours per Response:* 1 hour.
- *Total Estimated Burden:* 10,000 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

DATES: The Department will accept comments from the public up to 60 days from February 23, 2011.

ADDRESSES: You may submit comments by any of the following methods:

- *E-mail: ClausSR@state.gov.*
- *Mail (paper, disk, or CD–ROM submissions):* Chief, Legislation and Regulations Division, Visa Services—DS–3035 Reauthorization, 2401 E Street, NW., Washington, DC 20520–30106.
- *Fax:* (202) 663–3898.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Stefanie Claus of the Visa Services Directorate, U.S. Department of State, 2401 E Street, NW., L–603, Washington, DC 20522, who may be reached at (202) 663–2910.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: Form DS–3035 is used to determine the eligibility of a J–1 visa holder for a waiver of the two-year foreign residence requirement.

Methodology: Form DS–3035 is mailed to the Waiver Review Division of the Department of State.

Dated: February 11, 2011.

David T. Donahue,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2011–4056 Filed 2–22–11; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending January 22, 2011

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2006–24629.

Date Filed: January 18, 2011.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: Febuary 8, 2011.

Description: Application of Yangtze River Express Airlines Co., Ltd. requesting an exemption and amended foreign air carrier permit authorizing it to engage in charter foreign air transportation of property and mail between a point or points in the People's Republic of China, on the one hand, and a point or points in the United States, on the other hand; and a statement of authorization for 54 one-way third/fourth freedom cargo charter flights on a Shanghai (PVG)—Qingdao, China (TAO)—Los Angeles (LAX)—Shanghai (PVG) routing.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2011–3976 Filed 2–22–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending January 15, 2011

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier

Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2011–0005.

Date Filed: January 11, 2011.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 1, 2011.

Description: Application of Hangar 8 AOC Limited requesting a foreign air carrier permit to the full extent authorized by the Air Transport Agreement between the United States and the European Community and the Member States of the European Community to engage it to engage in: (i) Foreign charter air transportation of persons and property from any point or points behind any Member State of the European Union via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond; (ii) foreign charter air transportation of persons and property between any point or points in the United States and any point or points in any member of the European Common Aviation Area; (iii) other charters pursuant to prior approval requirements; and (iv) transportation authorized by any additional route rights made available to European Community carriers in the future. Hangar 8 further requests exemption authority to the extent necessary to enable it to provide the services described above pending issuance of a foreign air carrier permit and such additional or other relief as the Department may deem necessary or appropriate.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2011–3977 Filed 2–22–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending January 1, 2011

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–1999–5140.

Date Filed: December 30, 2010.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 20, 2011.

Description: Application of Arrow Air, Inc. d/b/a Arrow Air requesting to change the name in which its operating authority has been issued to: Alpha Cargo Airlines, Inc., d/b/a Alpha Cargo, and for reissuance of its certificate of public convenience and necessity in that name.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2011–3978 Filed 2–22–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Membership in the National Parks Overflights Advisory Group Aviation Rulemaking Committee

ACTION: Notice.

SUMMARY: By **Federal Register** notice (*See* 75 FR 68023; November 4, 2010) the National Park Service (NPS) and the Federal Aviation Administration (FAA) invited interested persons to apply to fill two vacant positions on the National Parks Overflights Advisory Group (NPOAG) Aviation Rulemaking Committee (ARC). These notices invited interested persons to apply to fill two vacancies representing environmental concerns due to the incumbent member's completion of their three-year term appointments on May 30, 2011. This notice informs the public of the persons selected to fill the vacancies on the NPOAG ARC.

FOR FURTHER INFORMATION CONTACT: Barry Brayer, Special Programs Staff, Federal Aviation Administration, Western-Pacific Region Headquarters, P.O. Box 92007, Los Angeles, CA 90009–2007, *telephone:* (310) 725–3800, *e-mail: Barry.Brayer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000 (the Act) was enacted on April 5, 2000, as Public Law 106–181. The Act required the establishment of the advisory group within 1 year after its enactment. The NPOAG was established in March 2001. The advisory group is comprised of a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes. The Administrator of the FAA and the Director of NPS (or their designees) serve as ex officio members of the group. Representatives of the Administrator and Director serve alternating 1-year terms as chairman of the advisory group.

In accordance with the Act, the advisory group provides "advice, information, and recommendations to the Administrator and the Director—

(1) On the implementation of this title [the Act] and the amendments made by this title;

(2) On commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or tribal lands, which will receive preferential treatment in a given air tour management plan;

(3) On other measures that might be taken to accommodate the interests of visitors to national parks; and

(4) At the request of the Administrator and the Director, safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands."

Membership

The current NPOAG ARC is made up of one member representing general aviation, three members representing the commercial air tour industry, four members representing environmental concerns, and two members representing Native American interests. Current members of the NPOAG ARC are as follows:

Heidi Williams representing general aviation; Alan Stephen, Elling

Halvorson, and Matthew Zuccaro representing commercial air tour operations; Chip Dennerlein, Greg Miller, Kristen Brengel, and Bryan Faehner representing environmental interests; and Rory Majenty and Ray Russell representing Native American tribes.

Selection

Selected to fill one of the vacancies for environmental concerns, for an additional term, is returning member Bryan Faehner. Selected to fill the other vacancy for environmental concerns is Dick Hingson, who will replace Kristen Brengel. Both these terms begin on May 31, 2011. The term of service for NPOAG ARC members is 3 years.

Issued in Hawthorne, CA, on February 10, 2011.

Barry Brayer,

Manager, Special Programs Staff, Western-Pacific Region.

[FR Doc. 2011–3938 Filed 2–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2011–0008]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system, as detailed below.

Applicant: Union Pacific Railroad Company, Mr. William E. Van Trump, AVP Engineering—Signal/Comm./TCO, 1400 Douglas Street, STOP 0910, Omaha, Nebraska 68179.

The Union Pacific Railroad Company (UP) seeks approval of the proposed discontinuance of the Automatic Block Signal system on the Strang Subdivision between control point Tower 68, at milepost (MP) 0.42, and holding signal ST912, at MP 2, near Englewood, Texas. The discontinuance consists of the removal of six automatic signals as well as the circuit controllers from five hand-operated switches and one hand-operated crossover. The hand-operated switches will remain in the application area without signal protection. The application area is to be Yard Limits and shall contain Remote Control Locomotive operations. The reason given for the proposed changes is that the signal system is no longer needed for efficient and safe operation of trains in this area.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2011–0008) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Page 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on February 16, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2011–4025 Filed 2–22–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Whitewater Valley Railroad

Waiver Petition Docket Number FRA–2010–0148

The Whitewater Valley Railroad (WVRR) seeks a waiver of compliance from certain provisions of the Railroad Freight Car Safety Standards, *i.e.* §§ 215.303 and 215.305, which require stenciling of restricted cars; as well as that of the Reflectorization of Rail Freight Rolling Stock, i.e. §§ 224.3 and 224.5, which require applying reflectors on freight cars and locomotives.

WVRR owns 13 freight cars that are older than 50 years from their date of original construction, and are restricted by the provision of 49 CFR 215.203(a). WVRR is concurrently seeking special approval to continue to use these cars under proceeding according to 49 CFR 215.203(b).

To support its petition to seek relief from the stenciling and reflectorization requirements, WVRR states that it is a 501(c)(3) non-profit organization. It is an operating railroad museum dedicated to the operation of a historic branch line railroad, to the restoration of railroad equipment, and to the conduct of educational railroad programs. The railroad owns and operates 19 miles of track between Metamora and Connersville, Indiana. These tracks are not part of the general railway system. Operating speeds on the line would never be authorized at more than 25 miles per hour.

WVRR states that to support its mission, it operates antiquated freight and passenger cars built prior to 1945, as well as a group of freight cars and locomotives built after 1945, in public excursion service as operating historic artifacts. On rare occasions, locomotives and freight cars (including flat, box and hopper cars) are used to demonstrate typical freight trains of the 1940s–60s. These operations are sometimes chartered programs designed for photographers, film production, and for

railroad historians. Revenue from these activities is used to further restore/maintain these cars for public display. On occasion, these locomotives and cars are also used in the maintenance of the organization's track. As one of the key purposes of the organization is to maintain the historic appearances of its cars and locomotives, compliance with the reflectorization of railroad freight rolling stock would greatly affect the historic appearance of this equipment. Stenciling requirements would also impact the appearance of those cars used periodically in maintenance of way service.

WVRR further states that it believes that a number of factors limit the impact on the public on its museum line. Main road crossings are signaled, primarily in the City of Connersville, Town of Laurel and at US Route 52 in Metamora, Indiana. Other grade crossings are on low volume paved and gravel roads with reflectorized grade crossing signs and posts to draw attention to these crossings. Freight car trains seldom run at night or during periods of poor visibility and are of limited length, generally fewer than 10 cars with the locomotive still visible at most of its grade crossings.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2010–0148) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on February 16, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2011–4024 Filed 2–22–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

CSX Transportation, Inc.

Waiver Petition Docket Number FRA–2011–0002

The CSX Transportation, Inc. (CSXT) seeks a waiver of compliance from certain provisions of Title 49 CFR parts 231 and 232, concerning the operation of RoadRailer® and RailRunner® equipment on their railroad. Specifically, CSXT seeks relief from certain provisions of the Railroad Safety Appliance Standards in 49 CFR part 231, that stipulates the number, location, and dimensions for handholds, ladders, sill steps, uncoupling levers, and handbrakes. CSXT also seeks relief from 49 CFR 231.1, which sets the standard height for drawbars. CSXT states that this relief is necessary to allow them to operate and commingle the RoadRailer® and RailRunner® equipment on dedicated trains operating on their railroad.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2011–0002) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Page 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on February 16, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2011–4022 Filed 2–22–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Applications for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, *etc.*) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before March 10, 2011.

ADDRESS COMMENTS TO: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue, Southeast, Washington, DC or at *http://regulations.gov*.

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on February 14, 2011.

Donald Burger,

Chief, Special Permits and Approvals Branch.

Application No.	Docket No.	Applicant	Regulations affected	Nature of special permits thereof
8723–M	.....	Maine Drilling & Blasting, Auburn, NH.	49 CFR 172.101; 173.62; 173.242; 176.83; 177.848.	To modify the special permit to authorize additional cargo tanks without internal self-closing shutoff valves.
12929–M	.....	Matheson Tri-Gas, Inc., Basking Ridge, NJ.	49 CFR 173.301(j)(1)	To authorize the transportation in commerce of charged DOT specification cylinders, UN specification cylinders and foreign cylinders with alternative pressure relief device configurations.
14584–M	.....	WavesinSolids LLC, State College, PA.	49 CFR 173.302 and 180.209.	To modify the special permit to authorize additional cylinders and to allow cylinders to be charged to 110 percent of the usual settled filled pressure or 110 percent of the stamped service service pressure (whichever is greater) and to extend the retest period from 5 years to 10.
15073–M	.....	Utility Aviation, Inc., Loveland, CO.	49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27(b)(2), 175.30(a)(1), 172.200, 172.300 and 172.400.	To modify the special permit to authorize the transportation in commerce of an additional Class 8 hazardous material.

[FR Doc. 2011–3796 Filed 2–22–11; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–60: OTS Nos. H–4757, H–4519, and 17971]

Sunshine Financial, Inc., Tallahassee Florida; Approval of Conversion Application

Notice is hereby given that on February 11, 2011, the Office of Thrift Supervision approved the application of Sunshine Savings MHC, Tallahassee, Florida, the federal mutual holding company for Sunshine Savings Bank, Tallahassee, Florida, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail *Public.Info@OTS.Treas.gov*) at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552, and the OTS Southeast Regional Office, 1475 Peachtree Street, NE., Atlanta, GA 30309.

Dated: February 15, 2011.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. 2011–3901 Filed 2–22–11; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL REGISTER

Vol. 76 Wednesday,
No. 36 February 23, 2011

Part II

Department of Agriculture

Rural Business—Cooperative Service
Rural Utilities Service

7 CFR Part 4284
Value-Added Producer Grant Program Interim Rule

DEPARTMENT OF AGRICULTURE

Rural Business—Cooperative Service

Rural Utilities Service

7 CFR Part 4284

RIN 0570–AA79

Value-Added Producer Grant Program

AGENCY: Rural Business—Cooperative Service and Rural Utilities Service, USDA.

ACTION: Interim rule.

SUMMARY: The Food, Conservation, and Energy Act of 2008 (the Act), amends section 231 of the Agricultural Risk Protection Act of 2000, which established the Value-Added Producer Grant Program. This program will be administered by the Rural Business-Cooperative Service. Under the interim rule, grants will be made to help eligible producers of agricultural commodities enter into or expand value-added activities including the development of feasibility studies, business plans, and marketing strategies. The program will also provide working capital for expenses such as implementing an existing viable marketing strategy. The Agency will implement the program to meet the goals and requirements of the Act.

The program provides a priority for funding for projects that contribute to opportunities for beginning farmers or ranchers, socially disadvantaged farmers or ranchers, and operators of small- and medium-sized family farms and ranches. Further, it creates two reserved funds each of which will include 10 percent of program funds each year to support applications that support opportunities for beginning and socially disadvantaged farmers and ranchers and for proposed projects that develop mid-tier value marketing chains.

DATES: This interim rule is effective March 25, 2011. Written comments on this interim rule must be received on or before April 25, 2011.

ADDRESSES: You may submit comments to this interim rule by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments electronically.
- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Stop 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742.
- *Hand Delivery/Courier:* Submit written comments via Federal Express mail, or other courier service requiring a street address, to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street, SW., 7th Floor address listed above.

FOR FURTHER INFORMATION CONTACT: Andrew Jermolowicz, USDA, Rural Development, Rural Business-Cooperative Service, Room 4016, South Agriculture Building, Stop 3250, 1400 Independence Avenue, SW., Washington, DC 20250–3250, *Telephone:* (202) 720–7558, E-mail *CPGrants@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule has been reviewed under Executive Order (EO) 12866 and has been determined not significant by the Office of Management and Budget. The EO defines a "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this EO.

The Agency conducted a cost-benefit analysis to fulfill the requirements of Executive Order 12866. The Agency has identified potential benefits to prospective program participants and the Agency that are associated with improving the availability of funds to help producers (farmers and harvesters) expand their customer base for the products or commodities that they produce. This results in a greater portion of the revenues derived from the value-added activity being made available to the producer of the product. These benefits are vital to the success of individual producers, farmer or rancher cooperatives, agriculture producer groups, and majority-controlled producer based business ventures.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) of Public Law 104–4 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, Rural Development must prepare, to the extent practicable, a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. With certain exceptions, section 205 of the UMRA requires Rural Development to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This interim rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." Rural Development has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.,* an Environmental Impact Statement is not required.

Executive Order 12988, Civil Justice Reform

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. Except where specified, all State and local laws and regulations that are in direct conflict with this rule will be preempted. Federal funds carry Federal requirements. No person is required to apply for funding under this program, but if they do apply and are selected for funding, they must comply with the requirements applicable to the Federal program funds. This rule is not retroactive. It will not affect agreements entered into prior to the effective date of the rule. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Executive Order 13132, Federalism

It has been determined, under Executive Order 13132, Federalism, that this interim rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in the rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–602) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have an economically significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

In compliance with the RFA, Rural Development has determined that this action will not have an economically significant impact on a substantial number of small entities for the reasons discussed below. While, the majority of producers of agricultural commodities expected to participate in this Program will be small businesses, the average cost to participants is estimated to be approximately 20 percent of the total mandatory funding available to the program in fiscal years 2009 through 2012. Further, this regulation only affects producers that choose to participate in the program. Lastly, small entity applicants will not be affected to a greater extent than large entity applicants.

Executive Order 12372, Intergovernmental Review of Federal Programs

This program is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. Intergovernmental consultation will occur for the assistance to producers of agricultural commodities in accordance with the process and procedures outlined in 7 CFR part 3015, subpart V.

Rural Development will conduct intergovernmental consultation using RD Instruction 1940–J, "Intergovernmental Review of Rural Development Programs and Activities," available in any Rural Development office, on the Internet at *http://www.rurdev.usda.gov/regs,* and in 7 CFR part 3015, subpart V. Note that not all States have chosen to participate in the intergovernmental review process. A list of participating States is available at the following Web site: *http://www.whitehouse.gov/omb/grants/spoc.html.*

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

USDA will undertake, within 6 months after this rule becomes effective, a series of Tribal consultation sessions to gain input by elected Tribal officials or their designees concerning the impact of this rule on Tribal governments, communities and individuals. These sessions will establish a baseline of consultation for future actions, should any be necessary, regarding this rule. Reports from these sessions for consultation will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to improve this rule in Indian country.

The policies contained in this rule would not have Tribal implications that preempt Tribal law.

Programs Affected

The Value-Added Producer Grant program is listed in the Catalog of Federal Domestic Assistance under Number 10.352.

Paperwork Reduction Act

The collection of information requirements contained in this interim rule have been submitted to the Office of Management and Budget (OMB) for clearance. In accordance with the Paperwork Reduction Act of 1995, the Agency will seek standard OMB approval of the reporting requirements contained in this interim rule. In the publication of the proposed rule on May 28, 2010, the Agency solicited comments on the estimated burden. The Agency received one public comment in response to this solicitation. This information collection requirement will not become effective until approved by OMB. Upon approval of this information collection, the Agency will publish a rule in the **Federal Register**.

Title: Value-Added Producer Grant Program.

OMB Number: 0570–XXXX.

Type of Request: New collection.

Expiration Date: Three years from the date of approval.

Abstract: The collection of information is vital to the Agency to make decisions regarding the eligibility of grant recipients in order to ensure compliance with the regulations and to ensure that the funds obtained from the Government are being used for the purposes for which they were awarded. Entities seeking funding under this program will have to submit applications that include information on the entity's eligibility, information on each of the evaluation criteria, certification of matching funds, verification of cost-share matching funds, a business plan, and a feasibility study. This information will be used to determine applicant eligibility and to ensure that funds are used for authorized purposes.

Once an entity has been approved and their application accepted for funding, the entity would be required to sign a Letter of Conditions and a Grant Agreement. The Grant Agreement outlines the approved use of funds and actions, as well as the restrictions and applicable laws and regulations that apply to the award. Grantees must maintain a financial system and, in accordance with Departmental regulations, property and procurement standards. Grantees must submit semi-annual financial performance reports that include a comparison of accomplishments with the objectives stated in the application and a final performance report. Finally, grantees must provide copies of supporting documentation and/or project deliverables for completed tasks (*e.g.,* feasibility studies, business plans, marketing plans, success stories, best practices).

The estimated information collection burden hours has increased from the proposed rule by 1,239 hours from 67,943 to 69,235 for the interim rule. The increase is attributable to reporting requirements that were inadvertently omitted from the proposed rule.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 11 hours per response.

Respondents: Producers of agricultural commodities.

Estimated Number of Respondents: 600.

Estimated Number of Responses per Respondent: 10.

Estimated Number of Responses: 6,239.

Estimated Total Annual Burden on Respondents: 69,235.

E-Government Act Compliance

The Agency is committed to complying with the E-Government Act of 2002 (Pub. L. 107–347, December 17, 2002) to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

I. Background

This interim rule contains the provisions and procedures by which the Agency will administer the Value-Added Producer Grant (VAPG) Program. The primary objective of this grant program is to help Independent Producers of Agricultural Commodities, Agriculture Producer Groups, Farmer and Rancher Cooperatives, and Majority-Controlled Producer-Based Business Ventures develop strategies to create marketing opportunities and to help develop Business Plans for viable marketing opportunities regarding production of bio-based products from agricultural commodities. As with all value-added efforts, generating new products, creating expanded marketing opportunities, and increasing producer income are the end goal.

Eligible applicants are independent agricultural producers, farmer and rancher cooperatives, agricultural producer groups, and majority-controlled producer-based business ventures.

Rural Development is soliciting comments regarding the participation of tribal entities including tribal governments in the VAPG Program. Specifically, we are seeking comment on ways to improve the ability of tribal entities participation in the VAPG Program and ways to overcome existing barriers to tribal entities' participation in the VAPG Program.

The program includes priorities for projects that contribute to opportunities for beginning farmers or ranchers, socially disadvantaged farmers or ranchers, and operators of small- and medium-sized family farms and ranches that are structured as Family Farms. Applications from these priority groups will receive additional points in the scoring of applications. In the case of equally ranked proposals, preference will be given to applications that more significantly contribute to opportunities for beginning farmers and ranchers, socially disadvantaged farmers and ranchers, and operators of small- and medium-sized farms and ranches that are structured as Family Farms.

Grant funds cannot be used for planning, repairing, rehabilitating, acquiring, or constructing a building or facility (including a processing facility). They also cannot be used to purchase, rent, or install fixed equipment.

This program requires matching funds equal to or greater than the amount of grant funds requested. The Act provides for both mandatory and discretionary funding for the program, as may be appropriated. Further, the program includes two reserved funds each of which will include ten percent of program funds each year to support applications that support projects that benefit beginning and socially disadvantaged farmers and ranchers and that develop mid-tier value marketing chains.

The number of grants awarded will vary from year to year, based on availability of funds and the quality of applications. The maximum grant amount that may be awarded is $500,000. However, the Agency may reduce that amount depending on the total funds appropriated for the program in a given fiscal year. This policy allows more grants to be awarded under reduced funding.

The Agency notes, pursuant to general Federal directives providing guidance on grant usage, that the matching funds requirement described in the Agricultural Risk Protection Act of 2000 may include a limited and specified in-kind contribution amount for the value of the time of the applicant/producer or the applicant/producer's family members only for their involvement in the development of the business and marketing plans associated with a planning grant project. *Please see* § 4284.902 definitions for Conflict of Interest, and Matching Funds; and § 4284.923(a) for applicant in-kind implementation protocol.

Interim Rule. The Agency is issuing this regulation as an interim rule, with an effective date of March 25, 2011. All provisions of this regulation are adopted on an interim final basis, are subject to a 60-day comment period, and will remain in effect until the Agency adopts final rules. The provisions of this subpart constitute the entire provisions applicable to this Program; the provisions of subpart A of this title do not apply to this subpart.

II. Summary of Changes to the Proposed Rule

This section presents changes from the May 28, 2010, proposed rule. Most of the changes were the result of the Agency's consideration of public comments on the proposed rule. Some changes, however, are being made to clarify proposed provisions. Unless otherwise indicated, rule citations refer to those in the interim rule.

A. Definitions

Numerous changes were made to the definitions, including revising, adding, and deleting definitions.

1. Revised definitions. Definitions that were revised included:

- *Agricultural commodity.* Incorporated the concept of agricultural product.
- *Agricultural producer.* Expanded the definition to incorporate concept of having legal right to harvest an agricultural commodity and how the term "directly engage" may be satisfied.
- *Agricultural producer group.* Added that independent producers, on whose behalf the value-added work will be done, must be confirmed as eligible and identified by name or class.
- *Conflict of interest.* Significant changes were made to ensure clarity between conflict of interest, in-kind contributions, and matching funds.
- *Emerging market.* Added the concept of "geographic market" and a two-year limitation.
- *Farmer or rancher cooperative.* Revised "independent agricultural producers" to read "independent producers" and added that independent producers must be confirmed as eligible and identified by name or class.
- *Independent producers.* Revised steering committee requirements and added harvesters as a new paragraph (3) to the definition.
- *Local or regional supply network.* Added "aggregators" to list of example entities that may participate in a supply network and added reference to "provide facilitation of services."
- *Majority-controlled producer-based business venture.* Added that Independent Producer members must be confirmed as eligible and must be identified by name or class, along with their percentage of ownership.
- *Matching funds.* Significant changes were made to ensure clarity between matching funds, in-kind contributions, and conflict of interest.
- *Medium-sized farm.* Increased the upper limit defining a medium-sized farm to $1 million.
- *Product segregation.* Removed reference to "product" because of the change in the definition for agricultural commodity.
- *Pro forma financial statement.* Added a minimum three year requirement for the projections included in the statement.
- *Project.* Added "eligible" so that the definition now refers to "eligible activities."
- *Qualified consultant.* Added the concept of no conflict of interest.

• *Value-added agricultural product.* Removed reference to "product" because of the change in the definition for agricultural commodity and reinstated text from the authorizing statute.

• *Venture.* Added "and its value-added undertakings" to the definition.

2. Added definitions. The following definitions were added:

• *Agricultural food product.* This term was added to help clarify what constitutes a "Locally-produced agricultural food product."

• *Applicant.* This term was added to emphasize applicant eligibility requirements.

• *Branding.* This term was added to clarify the implementation of the program with regard to branding activities.

• *Change in physical state.* This term is used in the Value-Added Agricultural Product definition and is being defined to increase understanding and Agency intention for this category and to mitigate problems that have presented during the history of the program.

• *Produced in a manner that enhances the value of the agricultural commodity.* This term is used in the Value-Added Agricultural Product definition and is being defined to increase understanding and implementation for this important product eligibility category in order to mitigate product eligibility problems and interpretations that have presented during the history of the program.

3. Deleted definitions. The following definitions were deleted:

• *Agricultural product.* The term is now incorporated into the definition of agricultural product.

• *Anticipate award date.* The term is not used in the rule.

• *Day.* Unnecessary to define.

• *Rural or rural area.* With the removal of the scoring criterion for being located in a rural or rural area, the term is not used in the rule.

B. Environmental Requirements

The Agency corrected this section by replacing the reference to Form 1940–22, "Environmental Checklist for Categorical Exclusions," with "Form RD 1940–20, Request for Environmental Information."

C. Applicant Eligibility

In addition to edits to clarify this section, changes included:

• Replacing "demonstrate" with "certify" in § 4280.920(c)(1) and (c)(2).

• Replacing reference to "immediate family members" with "entity owners" in § 4284.920(c)(2) to clarify the provision.

• Adding a requirement to evidence good standing as part of legal authority and responsibility (§ 4284.920(d)).

• Clarifying that "within 90 days" for closing out the currently active grant is based on the application submission deadline (§ 4284.920(f)).

D. Project Eligibility

Numerous changes were made throughout this section, including:

• Clarifying the conflict of interest provision in § 4284.922(b)(2).

• Adding exception to the requirement for submitting a feasibility study for applicants who can demonstrate that they are proposing market expansion for existing value-added products (*see* § 4284.922(b)(5)(i)).

• Adding an exception to the requirement for submitting a feasibility study and a business plan for working capital applicants requesting $50,000 or less and submitting simplified applications (*see* § 4284.922(b)(5)(ii)).

• Added reference to an emerging market "unserved by the applicant in the two previous years" to conform to change made in the definition of emerging market (*see* § 4284.922(b)(6)).

• Removing proposed paragraph § 4284.922(c), which results in removing the proposed limitations on branding activities.

• Revising reserved funds eligibility significantly to identify the type of documentation being requested (*see* § 4284.922(c)(1)(i) and (ii), § 4284.922(c)(2)(i) and (ii), and § 4284.922(c)(2)(iv)(A) and (B)).

• Adding a new paragraph (d) addressing requirements for applicants seeking priority points if they propose projects that contribute to increasing opportunities for beginning farmers or ranchers, socially disadvantaged farmer or ranchers, or operators of small- and medium-sized farms and ranches that are structured as a family farm.

E. Eligible Uses of Grant Funds

The Agency revised this section by including provisions to clearly allow the use of in-kind contributions and limiting in-kind contributions to 25 percent of total project costs.

F. Ineligible Uses of Grants and Matching Funds

In addition to adding new introductory text to this section to address conflict of interest and to clarify that use of funds is limited to only the eligible activities identified in § 4284.923, changes made include:

• Adding a new paragraph prohibiting paying for support costs for services or goods going to or coming from a person or entity with a real or apparent conflict of interest, except as specifically noted for limited in-kind matching funds in § 4284.923(a) and (b).

• Adding a new paragraph prohibiting paying for costs for scenarios with noncompetitive trade practices.

• Adding "for the processing and marketing of the value-added product" to the paragraph prohibiting paying expenses not directly related to the funded project.

• Adding "as identified by name or class" to the paragraph prohibiting paying for conducting activities on behalf of anyone other than a specifically identified independent producer or group of independent producers.

• Adding a new paragraph prohibiting paying owner or immediate family member salaries or wages.

• Adding a new paragraph prohibiting paying for goods or services from a person or entity that employs the owner or an immediate family member;

• Deleting proposed § 4284.924(p).

G. Preliminary Review

The Agency added text to reference applicant eligibility as part of the preliminary review conducted by the Agency.

H. Application Package

Substantive changes to this section include:

• Deleting the requirement to submit Form RD 400–1, Equal Opportunity Agreement.

• Adding the requirement to submit Form RD 1940–20.

• Adding that the performance criteria in the applicant's semi-annual and final reporting requirements can be requested by either the applicant or the Agency and will be detailed in either the grant agreement or the letter of conditions.

• Adding that the applicant must demonstrate the eligibility and availability of both cash and in-kind contributions (not just provide authentic documentation from the source as was proposed).

• Adding as acceptable matching funds a confirmed applicant or family member in-kind contribution that meets the requirements and limitations specified in § 4284.923(a) and (b) and non-federal grant sources (unless otherwise provided by law).

• Providing additional examples of ineligible matching funds.

• Providing exceptions as to when a business plan and a feasibility study are required.

• Changing the language in the product eligibility category "produced

in a manner that enhances the value of the agricultural commodity," to allow for the inclusion of planning grant applications in this category.

I. Filing Instructions

Changes to this section include:

- Replacing the fixed application deadline of March 15 each fiscal year with identification in an annual Federal Register notice of the application deadline, which will allow at least 60 days for applicants to submit their applications.
- Adding text to indicate that applications must contain all required components in their entirety.
- Adding text to indicate that emailed or faxed applications will not be accepted.

J. Processing Applications

The Agency revised § 4284.940(b) by limiting the Agency notifications under to applicants whose applications are found to be ineligible.

K. Proposal Evaluation Criteria and Scoring

Several changes were made to this section including:

- Adding text to indicate that applications whose scoring information is not readily identifiable will not be considered.
- Increasing the points to be awarded for the nature of the proposed project from 25 to 30.
- Decreasing the points to be awarded for the type of applicant from 15 to 10.
- Including points (10) to be awarded if the applicant is a cooperative.
- Deleting the rural or rural area location criterion.

L. Obligate and Award Funds (Grant Agreement at Proposal)

Two major revisions were made to this section as follows:

- Adding a new paragraph (c) detailing additional documentation that a grantee will need to execute in order for the Agency to obligate the award of funds.
- Adding details for the submittal of disbursement requests by the grantee (§ 4284.951(d)).

M. Monitoring and Reporting Program Performance

The Agency made several changes to this section, as follows:

- Adding text to § 4284.960(a) to indicate that grantees must complete the project per the terms and conditions specified in the approved work plan and budget, and in the grant agreement and letter of conditions.
- Revising the time allowed for submitting semi-annual performance reports from 30 to 45 days following March 31 and September 30 (*see* § 4284.960(b)(1)).
- Adding distribution network supply as an example of supporting documentation under § 4284.960(b)(3).
- Adding examples of the types of project and performance data that the Agency may request under § 4284.960(b)(4).
- Adding a new paragraph (§ 4284.960(b)(5)) identifying conditions under which the Agency may terminate or suspend the grant.

N. Transfer of Obligations

The Agency made two revisions to this section as follows:

- Adding to the introductory text that the transfer of obligation of funds is at the discretion of the Agency and will be made on a case-by-case basis.
- Revising § 4284.962(b) to condition the approval of a transfer of obligation of funds on the project continuing to meet "all product, purpose, and reserved funds eligibility requirements."

O. Grant Servicing

The Agency has revised this section to allow for an extension process that would not require the approval of the Administrator. Originally, the change was going to be made to 7 CFR part 1951 subpart E, however, the Agency decided that the information was a better fit under § 4284.961.

P. Grant Close Out and Related Activities

The Agency has revised this section to identify these activities more explicitly.

III. Summary of Comments and Responses

Purpose—(§ 4284.901)

Comment: One commenter recommends that "viable agricultural producers" be added to this language to clarify that the limited grant funds available in this discretionary funding program are intended to assist viable agricultural businesses that are financially prepared to progress to the next business level of planning for, or engaging in, value-added production.

Response: The Agency agrees with the commenter and has revised the rule accordingly.

Definitions—(§ 4284.902)

Comment: One commenter states that, in addition to the need for several new definitions related to program concepts, many of the current definitions in the proposed rule need revision for clarification and to ensure that the eligibility requirements dependent upon these definitions are included in the rule. Eligibility requirements depend upon and refer to the definitions, so the definitions must be comprehensive.

Response: The Agency agrees with the commenter and has revised definitions and provided additional definitions, as described in the following paragraphs.

Agricultural Commodity

Comment: One commenter states that there is no need to distinguish between "Agricultural Product" and "Agricultural Commodity," and recommends combining the definitions to read as follows:

Agricultural commodity. An unprocessed product of farms, ranches, nurseries, forests, and natural and man-made bodies of water, that the independent producer has cultivated, raised, or harvested with legal access rights. Agricultural commodities include plant and animal products and their by-products, such as crops, forestry products, hydroponics, nursery stock, aquaculture, meat, on-farm generated manure, and fish and seafood products. Agricultural commodities do not include horses or other animals raised or sold as pets, such as cats, dogs, and ferrets.

Response: The Agency agrees with the commenter and has revised the rule accordingly.

Agricultural Food Product

Comment: One commenter states that the definition for "Locally-produced agricultural food product" does not describe what an agricultural food product can and cannot be; it only describes the distance and geographic requirements for local foods. Thus, a definition consistent with the definition found in the Rural Business-Cooperative Service Business and Industry program is needed. The commenter recommends the following definition:

Agricultural food product. Agricultural food products can be a raw, cooked, or processed edible substance, beverage, or ingredient intended for human consumption. These products cannot be animal feed, live animals, non-harvested plants, fiber, medicinal products, cosmetics, tobacco products, or narcotics.

Response: The Agency agrees with the commenter and has revised the rule accordingly.

Agricultural Producer

Comment: One commenter recommends revising this definition to address "harvesters" as eligible agricultural producers, and to clarify past program conflicts of what it means to "directly engage" in production to strengthen the definition. The

commenter recommends the following definition:

Agricultural producer. An individual or entity directly engaged in the production of an agricultural commodity, or that has the legal right to harvest an agricultural commodity, that is the subject of the value-added project. Agricultural producers may "directly engage" either through substantially participating in the labor, management, and field operations themselves; or by maintaining ownership and financial control of the agricultural operation.

Response: The Agency agrees with the commenter and has revised the rule accordingly.

Agricultural Producer Group

Comment: One commenter recommends softening, for Mid-Tier Value Chain (MTVC) projects only, the definition of an Agricultural Producer Group (APG). Expand the APG definition to include nonprofits that have a mission to help promote farmer income through MTVC strategies, and reduce any requirement that the nonprofit be controlled by farmers. It is not necessary for a nonprofit with a MTVC to be controlled by farmers for it to be genuinely representative and committed to farmers and the MTVC. Such nonprofits are frequently the most likely to play a pivotal role in convening and organizing a complex web of entities along the value chain, and they should not be included as an eligible MTVC–APG.

Response: The Agency does not agree that it is necessary to change the definition of Agricultural Producer Group to allow for the participation of other entities. The Agency recognizes that nonprofit entities may provide valuable assistance within the supply chain and has added "nonprofit organizations" to the Reserved Fund Eligibility Requirements for MTVC.

Comment: One commenter suggests the following revised definition:

Agricultural producer group. A membership organization that represents independent producers and whose mission includes working on behalf of independent producers and the majority of whose membership and board of directors is comprised of independent producers. The independent producers, on whose behalf the value-added work will be done, must be confirmed as eligible and identified by name or class.

The commenter states that the added language instructs on the eligibility requirement that, for agricultural producer group, the Independent Producers must be identified. The commenter prefers to expand the definition by allowing identification by name or class. Because the regulation refers to the definitions for instruction on applicant eligibility, all eligibility requirements must be stated in the definition.

Response: The Agency agrees with the commenter and has revised the rule accordingly.

Agricultural Product

Comment: One commenter states that this definition is not needed and should be deleted. The commenter recommends combining this language with the "Agricultural Commodity" definition.

Response: The Agency agrees with the commenter and has revised the rule accordingly.

Beginning Farmer or Rancher

Comment: One commenter states that the final rule should facilitate applications from projects benefiting beginning farmers and ranchers. Supporting these projects is a statutory priority for the VAPG program. The statute also provides for a 10 percent reserved fund set-aside for projects that benefit beginning farmers or ranchers or socially disadvantaged farmers or ranchers. The specific wording of these two statutory provisions is very important.

The Agency is to give priority to projects that contribute to farming opportunities for beginning farmers and is to reserve funds for projects that benefit beginning farmers. Nowhere does the statute say that such priority projects must exclusively benefit beginning farmers and no one else. By statute, it is sufficient that the priority projects contribute to new farming opportunities and benefit beginning farmers. In implementing the intent of Congress, the Agency needs to provide guidance in regulations and/or in guidance to grant reviewers as to what constitutes a significant enough contribution or benefit to beginning farmers as to qualify a proposal as meeting the program priority or access to the reserved fund.

Stipulating the criteria in the rule has the negative effect of locking the criteria in place for all the years the rule remains in place. The alternative—dealing with the issue in the annual NOFA and/or grant review criteria—has the benefit of allowing for an iterative process to refine and fine tune the criteria based on actual experience.

The commenter prefers providing for iterative annual adjustments as needed to ensure the intent of Congress in creating the beginning farmer priority is actually achieved in the reality of program implementation. If, however, it is going to be stipulated in the rule, it is important that the rule is correct and clear as it is difficult and time consuming to change a final rule. In the case of individual farmer/rancher grants, there is no problem. The individual farmer or rancher is either a beginner or not. However, group proposals are an entirely different matter.

The proposed rule's beginning farmer definition dictates that all members of the farmer group, co-op, business, or other entity must be beginning farmers or ranchers, an extremely unlikely situation in the real world. The commenter believes the proposed rule negates the express will of Congress in creating the priority and reserved fund in the first place by creating a stipulation that renders the directive effectively null and void. Even if a 100 percent beginning farmer member co-op or business or farm group existed somewhere in the real world, requiring a new farm business made up of multiple farmers to be 100 percent beginners will preclude mentoring opportunities with more experienced farmers and increase risk of failure.

Hence, it would tend to defeat the purpose of the program. There are two operative provisions in the proposed rule related to beginning farmers and ranchers. The first is in reference to the reserved funds (proposed § 4284.922(d)(1)) and states: "If the applicant is applying for beginning farmer or rancher, or socially-disadvantaged farmer or rancher reserved funds, the applicant must provide documentation demonstrating that the applicant meets one of these definitions."

The second is a very indirect reference in the evaluation criteria and scoring of applications section, where up to 15 points are awarded for "Type of applicant." In the final analysis, therefore, everything in the rule hinges on the definition of beginning farmer or rancher in the definition section of the rule.

The commenter contends that this language indicates that proposals from individual beginning farmers or ranchers as well as applications from an agricultural producer group, co-op, and business must include exclusively beginning farmers or ranchers to qualify for the beginning farmer or rancher category. As it applies to group proposals, this definition flies in the face of the statutory language that projects simply contribute to beginning farmer opportunities and benefit beginning farmers.

The commenter states there are two remedies. One would be to change the

definition. The other would be to leave the definition as is, but add an operative provision elsewhere in the rule to ensure the rule complies with the law and common sense.

If the first alternative is chosen, the commenter recommends the definition of beginning farmer and rancher be amended as follows: "Beginning farmer or rancher. This term has the meaning given it in section 343(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)) and is an entity in which none of the individual owners have operated a farm or a ranch for more than 10 years. In the event that there are multiple farmer or rancher owners of the applicant group, at least 25 percent of the ownership must be held by beginning farmers or ranchers. For the purposes of this subpart, a beginning farmer or rancher must currently own and produce the agricultural commodity to which value will be added."

Another commenter states the rule must not create barriers for beginning farmers and ranchers that are part of a producer group or entity seeking to establish a value added market. The proposed rule suggests that BFR entities must have a 100 percent of the membership meeting the beginning farmer definition to qualify for the set-aside funds and priority status. This is difficult at best and most operations they have worked with do not include 100 percent beginning farmers. This requirement must be changed to be less restrictive or they will lose the opportunity to enable beginning farmers to enter existing operations and be provided mentoring and new market opportunities. The commenter believes a 25 percent ownership/membership test would be appropriate.

Response: The Agency disagrees with the commenters. The definition of beginning farmer or rancher is stipulated by statute, which also stipulates that projects must 'benefit' beginning farmers or ranchers. It is the position of the Agency that Reserved funds are to benefit this priority category exclusively. The statute indicates that priority points are to be awarded to projects that "provide opportunities" to beginning farmers or ranchers. It is the position of the Agency that priority points may be awarded to entities or groups in which Beginning Farmers or Ranchers comprise at least 51 percent membership.

Comment: One commenter suggests revising this definition and adding language clarifying that the beginning farmer or rancher must first be an eligible independent producer that is currently producing the majority of the agricultural product to which value will be added. Nonproduction of product, even for a beginning farmer or rancher, would not be an eligible application. The suggested revised definition is as follows:

Beginning farmer or rancher. This term has the meaning given it in section 343(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)) and is an entity in which none of the individual owners have operated a farm or a ranch for more than 10 years. For the purposes of this subpart, a beginning farmer or rancher must be an Independent Producer that, at time of application submission, currently owns and produces more than 50 percent of the agricultural commodity to which value will be added.

Response: The Agency disagrees with the suggested revision. A change in definition is not required to accomplish this goal. All program applicants must meet the criteria of one of the four applicant eligibility categories. The beginning farmer or rancher definition is statutory.

Change in Physical State

Comment: One commenter recommends adding a definition for "change in physical state." This terminology is used in the Value-Added agricultural product definition and should be defined to increase understanding and Agency intention for this category and to mitigate problems that have presented during the history of the program (pressure-ripened peaches, dehydrated corn: part of previous applications that were deemed ineligible by the program due to ineligible change in physical state).

Response: The Agency agrees with the recommendation and has added a definition for this term.

Conflict of Interest

Comment: One commenter states that the conflict of interest definition should be eliminated as it is confusing and inconsistent in application. First, the very receipt of a grant directly benefits the producer applicant(s) and could be considered a conflict. Secondly, what is the rationale for allowance of some activities by the producer applicant(s) while others are classified as having a conflict of interest? Application of the rule appears to be somewhat arbitrary in its current form.

The commenter also notes that this definition is confusing and misleading because applicant in-kind for the development of business plans and/or marketing plans is ruled to be an eligible match.

The commenter states that, if the term cannot be eliminated, further clarification of the definition is required. All exceptions to the rule must be clearly stated. As it stands now, applicant time contributed to the completion of a business and/or marketing plan is allowable (*See* § 4284.923, 75 FR 29929), but there is much confusion as to whether this would constitute a conflict of interest. The suggestion is to state more emphatically the ability of applicants to contribute time towards a business and/or marketing plan without incurring a conflict of interest.

The commenter further states that, for Working Capital applications, grant funds cannot pay the salaries of employees with an ownership interest to process and/or market and deliver the value-added product to consumers (as stated in proposed § 4284.923(b)) and asks why one payment is allowed and the other is not? Does this relate to conflict of interest? Clarification would aid in reader interpretation.

Response: The Agency agrees that guidance and clarification regarding Conflict of Interest is necessary.

The Agency considers the use of grant funds for direct personal financial gain to be a conflict of interest and will continue to prohibit use of grant funds to pay applicant/applicant family member salaries. However, the Agency recognizes the value of producer participation in planning activities, as well as the necessity of participating in eligible marketing activities. Therefore, both Planning and Working Capital applicants (and applicant family members, as necessary) may contribute time spent on eligible activities as in-kind match amounting to up to 25 percent of total project cost, provided that a realistic and relevant valuation of their time can be documented, as provided for at § 4284.923.

Comment: Numerous commenters urge the Agency to reconsider the definition for conflict of interest to include an exception to allow applicants to contribute time (*e.g.* in-kind match) towards the development of business and/or marketing plans. The commenters believe it is in the applicant's best interest to be intimately involved in this part of the process. Furthermore, for small, beginning farmers or ranchers, and/or disadvantaged farmers or ranchers especially, allowable in-kind match of this nature is of critical importance because the project is still at the planning stage and revenues from the project have yet to be realized. As such, the applicant's ability to match the grant with 100 percent cash is often limited.

Numerous commenters recommend keeping business and enterprise planning of VAPG projects farmer-centered. Farmers and ranchers should directly participate in the development of VAPG projects and be allowed to count their time as a contribution toward the program's matching requirements.

Several commenters state that, as agricultural producers and past recipients of VAPGs to conduct planning and feasibility studies, they believe strongly in this program and have received first-hand benefits. As a beginning farmer, the ability to contribute in-kind match towards the completion of planning grant was crucial in making the project affordable. Moreover, being personally involved in the completion of the business and marketing plan was critically important as the owners of the new value-added businesses and the persons who would bear primary responsibility for implementing these plans.

One commenter states that concern over conflicts of interest began to emerge in VAPG NOFAs several years ago and has now led to an overly restrictive definition. Specifically, the example provided in the definition of conflict of interest implies that farmers and ranchers have an inherent bias in favor of their project ideas that trumps an equally compelling interest in not investing their resources in an idea that will not work. The commenter states that its members' experience, in contrast, shows that successful businesses are those in which participating farmers and ranchers are intimately engaged in all of the planning stages.

Given the example included as part of the definition, the continued references to conflict of interest in the proposed rule give the clear impression that participation by the producer, their family members, and/or staff creates huge problems and is prohibited. This undermines the fundamental principle of the VAPG program: that farmers and ranchers should be empowered through these grants to explore creative new businesses that will increase farm income and create or expand rural wealth. This broad definition of conflict of interest could easily lead to an interpretation that would prohibit farmer or rancher participation in any of the work necessary for planning grants and result in VAPG evolving into a grant program that benefits consultants rather than producers.

The commenter agrees that feasibility studies generally should be written by third party professionals, but disagrees that a conflict of interest exists that should preclude producers from being integral to the research and information collection necessary for a successful feasibility study. The economic realities of the farmer and rancher communities the VAPG program was created to help ameliorate require that the program allow producers' time and expenses be permitted as an allowable match for grant funds.

The businesses most likely to succeed are those in which producers are most actively engaged in the enterprise's planning. Their involvement should be encouraged and counted as an equally important contribution as cash to the project. The inclusion of the example in the second sentence of the proposed rule's definition of conflict of interest, when applied to sections of the rule that refer back to the conflict of interest definition, contradicts the statute at 7 U.S.C. 1621(b)(1)(A) and (b)(3)(A) as well as the allowance made in proposed § 4284.923(a) and must be fixed to provide consistency and clarity. The commenter, therefore, recommends that the example be eliminated from the definition as follows:

"A situation in which a person or entity has competing professional or personal interests that make it difficult for the person or business to act impartially."

Response: The Agency agrees that the definition and application of "Conflict of Interest" needs clarification. The Agency also recognizes the value of producer participation in Planning activities, while, at the same time acknowledging that an unbiased, third party is necessary for the evaluative portions of these activities. Therefore, the Agency will retain its requirement that feasibility studies be performed by independent third-parties. However, applicants (and applicant family members, as necessary) are encouraged to participate in the non-evaluative portions of Planning grants and may contribute time as in-kind match amounting to up to 25 percent of total project cost, provided that a realistic and relevant valuation of their time can be documented, as described at § 4284.923.

Comment: One commenter recommends clearing up the confusion surrounding "conflict of interest." The proposed rule makes strides in addressing producer participation, however, it is confusing at best as to many areas regarding producer involvement. The most troublesome involves "conflict of interest" as it appears in several places throughout the rule and often times directly contradicts other areas of the rule.

The commenter recommends eliminating the inclusion of the example within the conflict of interest definition. The very nature of this program serving farmers and ranchers should indicate that their involvement would not be considered a "conflict of interest". The grant is for their purposes and their involvement is critical to the success of the project. Therefore, the rule must clear up this confusion and can begin by eliminating the example provided within the definition of conflict of interest.

The rule must also clear up all the inconsistencies where they appear regarding conflict of interest, producer involvement and direction indicating certain aspects must be through a third-party consultant.

Response: The Agency agrees and the example has been removed from the conflict of interest definition. In addition, the Agency has added language at § 4284.923(a) and (b) that clarifies that applicants (and applicant family members, as necessary) may participate in the non-evaluative portions of Planning grants and may contribute time as in-kind match amounting to up to 25 percent of total project cost, provided that a realistic and relevant valuation of their time can be documented.

Comment: One commenter recommends revising this definition and [deleting the line "An example is a grant recipient or an employee of a recipient that conducts or significantly participates in conducting a feasibility study for the recipient."

According to the commenter, conflict of interest has been a major problem in the program for years, and is largely responsible for the high volume of ineligible applications received annually. The conflict of interest definition and its implementation parameters need to be very clear in the regulation. The commenter suggested that the definition of "conflict of interest" read as follows:

"A situation in which a person or entity has competing personal, professional or financial interests that make it difficult for the person or business to act impartially. Regarding use of both grant and matching funds, Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, or their immediate family members having a financial or other interest in the outcome of the project; or that restrict open and free competition for unrestrained trade. Examples of conflicts of interest include, but are not limited to, organizational conflicts,

noncompetitive practices, and support of costs for goods or services provided by a person or entity with a conflict of interest. Specifically, grant and matching funds may not be used to support costs for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest, including, but not limited to, owner(s) and their immediate family members. See § 4284.923(a) for one limited exception to this definition and practice for VAPG."

According to the commenter, the suggested definition is consistent with Federal procurement standards that apply to VAPG, including 7 CFR part 3019 and 2 CFR part 230. An exception to the rule for limited applicant in-kind on BP and MP tasks is detailed in proposed § 4284.923(a), but the exception is not the rule, and conflict of interest should be clearly defined in the regulation.

Response: The Agency agrees and the definition has been revised for clarity, to remove the example, and to reference § 4284.923(a) and (b), which contain two limited exceptions to its implementation.

Day

Comment: One commenter asks why day needs to be defined.

Response: The Agency agrees with the commenter and has revised the rule accordingly.

Emerging Market

Comment: One commenter recommends the following revised definition:

Emerging market. A new or developing product, geographic, or demographic market that is new to the applicant or the applicant's product. To qualify as new, the applicant cannot have supplied this product, geographic or demographic market for more than two years at time of application submission.

The commenter states that the added clarification for "new" is necessary so that its interpretation is universal and it is not left open to subjectivity. The emerging market criterion only applies to agricultural producer groups, cooperatives, and majority controlled producer-based business venture type applicants as part of Project Purpose eligibility requirements.

Response: The Agency agrees with the commenter and has revised the rule accordingly.

Farm- or Ranch-based Renewable Energy

Comment: One commenter states that the definition for Value-Added Agricultural Product refers to "farm or ranch based renewable energy," but does not offer a definition. The following definition clarifies what is eligible and ineligible renewable energy in this program. Although, given the new definition for agricultural commodity, (bodies of water), the commenter now questions whether hydro energy would be an eligible renewable energy product.

Farm- or Ranch-based Renewable Energy. An agricultural commodity that is used to generate renewable energy on a farm or ranch owned or leased by the independent producer applicant that produces the agricultural commodity. On-farm generation of energy from wind, solar, geothermal, or hydro sources are not eligible.

Response: The Agency agrees with the commenter and has added a definition to the rule.

Farmer or Ranch Cooperative

Comment: One commenter recommends the following revised definition:

Farmer or rancher cooperative. A business owned and controlled by independent producers that is incorporated, or otherwise identified by the state in which it operates as a cooperatively operated business. The independent producers, on whose behalf the value-added work will be done, must be confirmed as eligible and identified by name or class.

The commenter stated that the added language instructs on the eligibility requirements that include: (1) The cooperative must be comprised of Independent producers (and not simply agricultural producers), a definition wherein lies primary applicant eligibility requirements for all four applicant types; and (2) the independent producers on whose behalf the work will be done must be identified. Because the regulation refers to the definitions for instruction on applicant eligibility requirements, all eligibility requirements must be stated in the definitions.

Response: The Agency agrees with the commenter and has revised the rule accordingly.

Feasibility Study

Comment: One commenter states that the rule's definition of "feasibility study" contradicts the statute at 7 U.S.C. 1621(b)(3)(A) and would also contradict the proposed rule in § 4284.923(a), if modified as the commenter suggests. The commenter recommends the following conforming language be added to that definition to provide consistency and clarity:

Feasibility study: An analysis of the economic, market, technical, financial, and management capabilities of a proposed project or business in terms of the project's expectation for success. Applicants may use a qualified consultant to perform the feasibility study, in which case applicants and family members of applicants may participate in collecting data and providing input required by the qualified consultant in the development of a feasibility study and may either receive payment for their time or may count their time as an in-kind contribution of matching funds to the extent that the value of such work can be appropriately valued.

Response: The Agency disagrees with the commenter. The Agency's definition of Feasibility Study does not contradict the statute at 7 U.S.C. 1621(b)(3)(A) or the eligible uses of grant and matching funds in § 4284.923(a).

Comment: One commenter states that, in the past, the qualified consultant has been an independent, third party without a conflict of interest. If that is still the intent, it would be helpful if that was listed in the definition.

Response: The Agency agrees with the commenter and the definition of Qualified Consultant has been revised to add reference to "without a conflict of interest."

Independent Producers

Comment: One commenter states that requiring the producer retain ownership through the entire value-added process is often legally difficult to accomplish and may be undesirable for a number of reasons, such as the creation of legal liability during transportation, processing, etc. An agricultural producer should be free to part with ownership of the commodity at any stage during the value-chain provided the end result is an increase in profits and market share. The logic of this is recognized in an allowance of this kind of flexibility with handling MTVC proposals. It should also be offered for regular VAPG projects as well. If an eligible VAPG applicant can show their profits will be increased from a project, the stage at which ownership transfers should be irrelevant.

Response: The Agency disagrees with extending the ownership exception as suggested. The mid-tier value chain exception is relevant because of the required alliances and agreements that provide for mutually-beneficial distribution of revenue based on the agreed upon end-product and market. Agricultural producers applying without the benefit of this structure do not necessarily gain these benefits

where title changes hands before value is added and gains from that added-value realized.

Comment: One commenter recommends the following revised definition:

Independent producers.

(1) Individual agricultural producers or entities that are solely owned and controlled by agricultural producers. Independent producers must produce and own the majority of the agricultural commodity to which value will be added as the subject of the project proposal. Independent producers must maintain ownership of the agricultural commodity from its raw state through the production and marketing of the value-added product. Producers who produce the agricultural commodity under contract for another entity, but do not own the agricultural commodity or value-added product produced, are not considered independent producers. Entities that contract out the production of an agricultural commodity are not considered independent producers.

(2) A steering committee comprised only of specifically identified agricultural producers in the process of organizing one of the four program eligible entity types that will operate a value-added venture and that will be owned and controlled by those same agricultural producers identified in the steering committee at time of application, and will supply the majority of the agricultural commodity for the value-added project during the grant period.

(3) A harvester of an agricultural commodity that can document their legal right to access and harvest the majority of the agricultural commodity that will be used for the value-added product. Harvesters do not meet the Agricultural Producer definition and may only apply as an Independent Producer applicant type.

The commenter states that applicant ownership and control is the consistent language used throughout the program definitions and should be maintained in the independent producer definition. "Marketing," "agricultural commodity," and "value-added product" are conforming uses previously noted. Steering committees need to be included as eligible independent producer applicants, and Cooperative Programs determined to allow as eligible, formation of any one of the four applicant entity types from steering committee. Harvesters must be included as independent producers for eligibility, and can only apply as independent producers because they do not meet the Agricultural Producer definition requirements.

Response: The Agency agrees and has revised the rule as suggested by the commenter with the following exceptions. The revision of the Steering Committee portion should not restrict the Agency from granting prior approvals to changes in ownership structure which conform to eligibility requirements. Paragraph 2 has been revised as follows:

(2) A steering committee comprised of specifically identified agricultural producers in the process of organizing one of the four program eligible entity types that will operate a value-added venture and will supply the majority of the agricultural commodity for the value-added project during the grant period.

The Agency disagrees with the wording proposed regarding Agricultural Harvesters. All applicants must meet the definition of Agricultural Producer, which is inclusive of Agricultural Harvesters. A paragraph addressing harvesters has been added to read as follows:

(3) A harvester of an agricultural commodity that can document their legal right to access and harvest the majority of the agricultural commodity that will be used for the value-added product.

Local or Regional Supply Network

Comment: One commenter proposes the following adjustments to the local or regional supply network definition.

Local or regional supply network: An interconnected group of entities through which agricultural based products move from production through consumption in a local or regional area of the United States. Examples of participants in a supply network may include agricultural producers, aggregators, processors, distributors, wholesalers, retailers, consumers, and entities that organize or provide facilitation services and technical assistance for development of such networks.

Response: The Agency agrees with the commenter and has revised the rule accordingly.

Locally-Produced Agricultural Food Product

Comment: One commenter recommends the following revised definition:

Locally-produced agricultural food product. An agricultural food product, as defined in this subpart, that is raised, produced, and distributed in:

(1) The locality or region in which the final product is marketed, so that the total distance the product is transported is less than 400 miles from the origin of the product; or

(2) The State in which the product is produced.

The commenter states that this definition includes a reference to Agricultural Food Product, which they believe needs a definition of its own.

Response: The Agency agrees with the commenter and has revised the rule accordingly.

Majority-Controlled Producer-Based Business Venture

Comment: One commenter recommends revising this term by deleting "venture", because the applicant must be a legal business entity and not a venture: Majority-controlled producer-based business.

Response: The Agency disagrees with the commenter and has retained the term as proposed because the ability to refer to activities beyond those specific to the grant allows for more precise communication.

Marketing Plan

Comment: One commenter states that the statute at 7 U.S.C. 1621(b)(1)(A) and (b)(3)(A) clearly states that VAPG grants are to assist an eligible producer in developing a business plan for viable marketing opportunities or in developing strategies that are intended to create marketing opportunities for the producer. The definition contradicts the statute by granting consultants exclusive rights to awards for marketing plans. Moreover, this definition also directly contradicts the allowance in § 4284.923(a) for producers to count their time in developing marketing plans as in-kind matching contributions. Therefore, the commenter proposes that the definition be fixed to read: "Marketing plan: A plan for the project that identifies a market window, potential buyers, a description of the distribution system and possible promotional campaigns."

Response: The Agency disagrees. The definition of Marketing Plan is not inconsistent with the statute at 7 U.S.C. 1621(b)(1)(A) and (b)(3)(A) or language on eligible uses of grant and matching funds in the proposed rule in § 4284.923(a).

Matching Funds

Comment: One commenter states that applicant in-kind as an eligible match is not listed, though it is stated as being allowable for the development of business plans and/or marketing plans and suggests revising for greater clarity. The commenter requests guidance on determining appropriate valuation for applicant in-kind match.

Response: The Agency will provide guidance on the valuation of matching funds in the application package.

Comment: One commenter suggests the following revised definition:

Matching funds. A cost-sharing contribution to the project via confirmed cash or funding commitments from eligible sources without a real or apparent conflict of interest, that are used for eligible project purposes during the grant funding period. Matching funds must be at least equal to the grant amount, and combined grant and matching funds must equal 100 percent of the total project costs. All matching funds must be verified by authentic documentation from the source as part of the application. Matching funds must be provided in the form of confirmed applicant cash, loan, or line of credit, or provided in the form of a confirmed applicant or family member in-kind contribution that meets the requirements and limitations in § 4284.923(a); or confirmed third-party cash or eligible third-party in-kind contribution; or confirmed non-federal grant sources (unless otherwise provided by law). *See* examples of ineligible matching funds and matching funds verification requirements in §§ 4284.924 and 4284.931.

The commenter states that using the terms "real or apparent" conflict of interest is more consistent with Federal procurement standards and replaces the term, "potential" conflict of interest. Note, this definition has been significantly modified from the proposed rule definition to be consistent with the Agency intention to allow limited applicant in-kind contributions as match. Also, a significant amount of the proposed rule definition (examples) has been moved to § 4284.931 for "verifying match funds."

Response: The Agency agrees and the definition has been revised to include the allowance of limited applicant in-kind contributions.

Comment: One commenter states that this paragraph is not, on the whole, a definition, but rather a set of substantive rule provisions that probably belong in the body of the rule rather than in the definition section. Mixing detailed operational provisions into a definition is generally not considered good rule writing practice. Second, and far more importantly, the omission of any mention of producer in-kind matches while specifically referencing third-party in-kind match clearly implies that applicant time is not an eligible match and, combined with the proposed rule's broadly defined conflict of interest definition, will have a chilling effect on potential farmer and rancher applicants.

To be consistent with the allowance in § 4284.923(a), the rule must clearly state that producer time, travel expenses, purchased materials, and other expenses incurred working on the project are eligible in-kind matching contributions for grants and do not present a conflict of interest. Therefore, the commenter recommends the following modifications to the definition:

Matching funds: "A cost-sharing contribution to the project via confirmed cash or funding commitments or via anticipated in-kind contributions from eligible sources without a conflict of interest that are used for eligible project purposes during the grant period. Eligible matching funds include confirmed applicant cash, loan or line of credit, non-Federal grant sources (unless otherwise provided by law), and eligible in-kind contributions, and third party cash or eligible third-party in-kind contributions. Matching funds must be at least equal to the grant amount, and combined grant and matching funds must equal 100 percent of the total project costs. All eligible cash and in-kind matching funds contributions must be spent on eligible expenses during the grant period, and are subject to the same use restrictions as grant funds."

Response: The Agency has revised the definition of Matching Funds to include allowance of limited applicant in-kind matching contributions.

Comment: One commenter asks why matching funds can only be provided by "eligible sources without a conflict of interest." Doesn't providing matching funds create an inherent conflict of interest? It appears that by adding the "without a conflict of interest" restriction, it conflicts with many other parts of the definition. For instance, the applicant would have a conflict of interest, yet the definition states that applicant cash is permissible.

Response: The Agency disagrees with the commenter. The matching funds requirement does not constitute an inherent conflict of interest.

Comment: One commenter states that text in the proposed rule concerning conflict of interest, in-kind contributions, and matching funds is confusing and contradictory to other text and needs to be consistent. The commenter points to the following text:

- Also, note that in-kind matching funds may not be provided by a person or entity that has a conflict of interest or an appearance of a conflict of interest. (proposed § 4284.924)
- Matching funds must be from eligible sources without a conflict of interest and without the appearance of a conflict of interest. (proposed § 4284.931(b)(4)(ii))
- Matching funds must be provided in the form of confirmed applicant cash, loan, or line of credit; or confirmed third-party cash or eligible third-party in-kind contribution. (proposed § 4284.931(b)(4)(v))
- Examples of ineligible matching funds include funds used for an ineligible purpose, contributions donated outside the proposed grant period, third-party in-kind contributions that are over-valued, expected program income at time of application, or instances where the potential for a conflict of interest exists, including applicant in-kind contributions in § 4284.923(a). (proposed § 4284.931(b)(4)(vi))

The commenter specifically asks: Is applicant match ineligible as a matter of being a conflict of interest (as inferred here) or is it allowed as states in § 4284.923(a)?

Response: The Agency agrees with the commenter that the proposed text as given is confusing. The Agency has revised § 4284.923(a) and (b) to include limited applicant in-kind match. In addition, the Agency has revised § 4284.924 to make the rule clearer.

Medium-Sized Farm

Comment: One commenter states that the final rule should provide a more reasonable definition of medium-sized farms and ranches. The proposed rule defines the medium-sized farms and ranches as those with average annual sales between $250,000 and $700,000. The commenter recommends the following amendment to the medium-sized farm definition: "Medium-sized farm: A farm or ranch that has averaged between $250,001 and $1,000,000 in annual gross sales of agricultural products in the previous three years."

According to USDA data, all sales classes above $5,000 and below $1,000,000 are declining in numbers. The proposed rule defines small farms as those with sales below $250,000. The sales classes between $250,000 and $1,000,000 are the so-called "disappearing middle" of agriculture that Secretary Vilsack has so eloquently addressed in his public speeches. This is the segment of agriculture perfectly tailored for the VAPG program and its value-added income opportunities. While nearly 60 percent of the total value of agricultural production is captured by farms of over $1 million in sales, the disappearing middle still represents a substantial amount of

production—25 percent but declining—and a large number of total producers.

They are well-situated, as the Secretary repeatedly points out, to take advantage of value-added opportunities in local and regional food systems and in bioenergy and bioproducts. While their ability to compete in the raw, undifferentiated commodity market is unlikely to be a path to survival and prosperity without further farm consolidation and the lost economic opportunity that goes with it, competing in the value-added market can be a good bet for these farms. It is reasonable to expect that those farms with successful value-adding enterprises are more likely than others to be in that higher profit margin category. From a family farm and rural development perspective, policy, including the VAPG program, should do everything it can to increase their numbers.

The higher the reliance on on-farm income, the more important value-adding strategies become. Targeting the program's small and medium-sized family farm priority toward the larger small farm class plus the disappearing middle makes a great deal of sense. These farms rely on farm income for a majority of household income, but need to tap into value-adding enterprises and markets to secure a long-term financial future.

Creating a single farm size threshold for all of agriculture is a difficult proposition given the great diversity of U.S. agriculture. For instance, specialty crop and dairy farms have a much higher percentage of farms over the $1 million sales threshold than the rest of agriculture and for both the vast majority of production comes from those largest farms. While the $700,000 threshold in the proposed rule might be roughly adequate for grain farms, and far more than adequate for poultry farms, it is significantly too low for dairy and produce farms. While one could imagine a more complex rule with thresholds that vary by type of farm, if the final rule sticks with a single threshold, it is important that it works and makes sense for agriculture as a whole. While not perfect, the $1 million threshold is more defensible than the proposed rule's $700,000.

One commenter proposes that the average annual gross sales be between $250,001 and $750,000, so that it matches the SBA's size standard for crop and animal production.

One commenter states that $500,000 is more appropriate for the upper limit. The commenter states that anything over $500,000 would be considered large by the majority of farmers and the farm industry in their region/area. The majority of farm or ranch producer's income will be below $250,000. Keeping the upper limit at $700,000 could make it more difficult for a medium size farm to compete for VAPG funding, if that $700,000 farm income was really a feasible and viable operation.

One commenter suggests that the current definition of "mid-size farmer" (*i.e.,* gross farm income up to $750,000) is an appropriate standard, and should be maintained. The segment of production agriculture in the Midwest that has experienced greatest contraction is the "ag in the middle", independent "family farm scale" farmers that try to make a full time living, typically in commodity agriculture. This group would most benefit from value-added strategies because they typically already have production ability, and using value-added strategies (individually or as members of a co-op or LLC) would provide a useful hedge to their income. In the Midwest, a $750,000 operation would only represent a dairy operation of a 200 cow dairy (23,000 lb herd average, $17/cwt), or a 1250 acre commodity crop operation (corn at $3/bushel, 200 bushel/acre yield). Neither of these size operations are "big" by modern standards, yet they are the size operation that is being lost the fastest. Providing support to this scale of operation maintains working families on the land, independent ownership in the supply chain, and supports rural economies.

Response: It is the position of the Agency that the "$1 million average annual gross sales of agricultural commodities in the previous three years" is more consistent with expert commentary on the subject of "agriculture in the middle," and is consistent with the Agency prerogative to be more inclusive. The upper limit of gross sales for a medium sized farm will be changed to $1,000,000.

Mid-Tier Value Chain

Comment: One commenter asks if the only type of eligible applicant is an independent producer. The commenter suggests expanding this text for clarification purposes to include all eligible applicant types (*e.g.,* APG, Cooperative, and MCPBBV).

The commenter adds that **Federal Register** Vol. 74, No. 168, 9/1/2009 (45168–9) explicitly states that all 4 producer types are eligible for the Mid-Tier Value Chain and suggests revising the Definition section for Mid-Tier Value Chain to reflect this. The commenter states that independent producers have hesitated to be the applicant as that person then must bear the entire tax burden related to the grant (though the grant will most likely benefit multiple producers). If other members of the supply network were able to be listed as co-applicants, the tax burden could be shared.

Response: The mid-tier value chain applicant must be one of the four eligible applicant types and the project eligibility requirements at § 4284.922 have been revised accordingly. Other members of the supply network may not be listed as co-applicants, but should be referenced in accordance with project eligibility requirements.

Comment: One commenter states that the final rule should make small improvements to the mid-tier value chain provisions to ensure maximum responsiveness and effectiveness. The rules should be written in a way that is properly descriptive of what characterizes these marketing relationships without inadvertently precluding non-traditional marketing alliances that achieve the desired result of increasing markets for producers and improving their ability to achieve fair prices. For instance, mid-tier value chains may include non-profit organizations that provide aggregation, processing, or transportation services for producers to facilitate sales to local institutions and markets. Community supported agriculture projects are sometimes organized by an individual producer acting on behalf of and with the support of allied farmers or ranchers to market of their aggregated product to institutional and other emerging markets. As various kinds of mid-tier value chains like those above are still emerging, the final rule should be as inclusive and flexible as possible.

The commenter proposed the following small adjustments to the mid-tier value chain definition.

Mid-tier value chain: Local and regional supply networks that link independent producers with businesses and cooperatives that market value-added agricultural products in a manner that:

(1) Targets and strengthens the profitability and competitiveness of small and medium-sized farms and ranches that are structured as a family farm; and

(2) Obtains agreement from eligible individual producers or an eligible agricultural producer group, farmer or rancher cooperative, or majority controlled producer-based business venture that is engaged in the value chain on a marketing strategy.

(3) For mid-tier value chain projects the Agency recognizes that, in a supply chain network, a variety of raw agricultural commodity and value-

added product ownership and transfer arrangements may be necessary. Consequently, applicant ownership of the raw agricultural commodity and value-added product from raw through value-added is not necessarily required, as long as the mid-tier value chain proposal can demonstrate an increase in customer base and an increase in revenue returns to the applicant producers supplying the majority of the raw agricultural commodity for the project.

Response: The Agency agrees and recognizes that mid-tier value chains are intended to be relatively flexible and inclusive of many types of entities that can facilitate and find mutual benefit in partnership. The Agency has revised the eligibility requirements at § 4284.922 for Mid-Tier Value Chain to include nonprofit organizations as possible participants.

Comment: One commenter recommends clarifying the definition to indicate that a minimum of two small/medium-sized farms must benefit from the MTVC project and that the eligibility requirement of ownership of raw commodity through to the VA product is waived only for MTVC projects.

Response: The Agency disagrees with the first item because it is inconsistent with statutory language. The Agency agrees with the commenter on the second item and has revised the rule accordingly.

Planning Grant

Comment: One commenter states that this definition makes clear that planning grants are to be used to develop a feasibility study which may include a business and/or marketing plan. The statute provides for two types of grants, one to perform feasibility studies and one for working capital. Clearly what the Agency and the proposed rule refer to as planning grants are the first of the two statutory grant strategies. The statute directs the Agency to make grants to producers to perform feasibility studies and develop business plans. Thus, the statute requires the Agency to make planning grants to producers who in turn will perform feasibility studies and development business plans.

The "planning grant" definition must be changed to conform to the statute at 7 U.S.C. 1621 1621(b)(1)(A) and (b)(3)(A) and to clarify that these grants are designed to benefit producers who by statute may perform the feasibility study. The commenter supports the notion that use of a "qualified (third-party) consultant" may be strongly encouraged. Applicant producers should have the option to hire consultants, and should be encouraged to do so, but they cannot be required to do so by rule.

Otherwise the rule is in direct conflict with the statute.

The commenter recommends the following definition: Planning grant: "A grant to facilitate the development of a defined program of economic planning activities to determine the viability of a potential value-added venture, and specifically for the purpose of paying for a qualified (third-party) consultant including to conduct and develop a feasibility study, business plan, and/or marketing plan associated with the processing and/or marketing of a value-added agricultural product. A planning grant may be used in whole or in part for the purpose of paying for a qualified third party consultant. Use of third party consultants is strongly encouraged."

Response: The Agency disagrees with the commenter. The statute provides that grants are made to eligible applicants to "assist" in the development of feasibility studies, marketing plans, business plans and the definition of Planning Grant is consistent with statute.

Pro Forma Financial Statement

Comment: One commenter recommends revising this definition to require a minimum of three years for the projections included in the statement. The commenter states that standard business practice for financial projections for a new venture is a minimum 3 years, and is often between 5–10 years. A 3-year minimum standard for financials is appropriate for VAPG ventures that may then move on to use working capital funding for a 3-year project.

Response: The Agency agrees with the commenter and has revised the rule accordingly.

Produced in a Manner That Enhances the Value of the Agricultural Commodity

Comment: One commenter states that the term "produced in a manner that enhances the value of the agricultural commodity, which is used in the Value-Added Agricultural Product definition, needs to increase understanding and implementation for this important product eligibility category (1 of the 5) in order to mitigate product eligibility problems or interpretations that have presented during the history of the program (pot-in-pot produce, T-bar grape vine, plugs, container grown trees: all previous products that were ultimately (and correctly) deemed ineligible due to not meeting a differentiated agricultural production eligibility standard that demonstrated added value to the product). According to the commenter, without a definition for this term, its interpretation will be left open to many various reviewers across the United States and will be applied in a non-uniform manner. The National Office will be called upon continuously to discern eligibility on a case-by-case basis, which is very inefficient. Eligibility for this category should rely upon differentiated or non-standard agricultural production practices that are demonstrated in the application using a quantifiable comparison with products produced in the standard manner.

Response: The Agency agrees with the recommendation and has added a definition for this term.

Project

Comment: One commenter recommends revising the definition of "project" to refer to "eligible" activities.

Response: The Agency agrees with the suggested edit and has revised the definition as suggested.

Rural Development

Comment: One commenter states that the term needs to be moved in the rule for proper alphabetizing.

Response: The Agency has placed this term in alphabetical order.

Socially Disadvantaged Farmer or Rancher

Comment: One commenter states that a provision reserving a portion of VAPG funding for members of socially disadvantaged groups that was introduced in 2009 is continued in the 2010 proposed rules. According to the commenter, this provision raised a question last year as to whether the qualifying 51 percent all had to belong to the same socially disadvantaged group or could belong to different groups (*e.g.,* qualified ethic groups, Caucasian females). USDA staff had no firm guidance on this last year, which is understandable for a new rule. The commenter would like to see it clarified in the 2010 rules. The 2009 rules states that the 51 percent was decided by head count rather than ownership share; the proposed 2010 rule seems more ambiguous.

Response: The statute provides a reservation of funding for projects "to benefit" Socially Disadvantaged Farmers and Ranchers. It is the position of the Agency that an applicant must meet the statutory definition of Socially-Disadvantaged Farmer or Rancher to qualify for reserved funding. Therefore, the applicant must be an individual

independent producer or an entity comprised of 100 percent Socially-Disadvantaged Farmers or Ranchers.

The statute also gives priority to projects that "contribute to increasing opportunities" to Socially Disadvantaged Farmers or Ranchers. This priority is implemented through the award of additional points in the scoring process. It is the position of the Agency that entities comprised of at least 51 percent Socially-Disadvantaged Farmers or Ranchers are eligible to receive priority points. The Socially-Disadvantaged Farmer or Rancher members of such an entity do not have to be members of the same Socially-Disadvantaged group.

Comment: One commenter notes that the definition of socially-disadvantaged farmers and ranchers includes a 51 percent threshold for group applications. While there are a number of producer cooperatives that are made up exclusively or almost exclusively of socially disadvantaged farmers and ranchers, the commenter does not know of any cooperatives or businesses that consist exclusively of beginning producers. The needs and realities of the two groups are distinct. A majority of members of socially disadvantaged producer groups and co-ops often have many years of agricultural experience and can work with any beginning producers in the group.

So while a 51 percent standard makes sense for socially-disadvantaged groups, it does not make sense for beginning farmers and ranchers. Rules, to be effective, must reflect the facts on the ground and not some nonexistent ideal world. Moreover, mentoring by more experienced farmers is a need and an opportunity specific to enterprises including beginning farmers and ranchers which also makes the 25 percent threshold for beginners an appropriate measure to qualify a project for this reserved fund.

The commenter prefers to leave the specific threshold to the annual, iterative NOFA process, so the Agency and the public can learn from experience about what works best to ensure the intent of Congress is fulfilled. If that route is chosen, the language of the NOFA must be crystal clear about the 25 percent standard and not preclude a reasonable result by way of a super restricted definition.

Response: The statute provides a reservation of funding for projects "to benefit" Beginning Farmers and Ranchers. It is the position of the Agency that an applicant must meet the statutory definition of Beginning Farmer or Rancher to qualify for reserved funding. Therefore the applicant must be an individual independent producer or an entity comprised of 100 percent Beginning Farmers or Ranchers.

The statute also gives priority to projects that "contribute to increasing opportunities" to Beginning Farmers or Ranchers. This priority is implemented through the award of additional points in the scoring process. It is the position of the Agency that entities comprised of at least 51 percent Beginning Farmers or Ranchers are eligible to receive priority points.

Value-Added Agricultural Product

Comment: One commenter recommends deleting "or product" from this term, as the commenter recommends combining the terms "agricultural commodity" and "agricultural product" and labeling them as "agricultural commodity".

Response: The Agency agrees with the suggested edit and has revised the definition as suggested.

Venture

Comment: One commenter recommends adding "and its value-added undertakings" to this definition. The commenter states that the venture includes the value-added undertakings and is not limited to the business alone. However, the venture may include initiatives that are not grant or value-added project eligible, hence, the "other related activities."

Response: The Agency agrees with the suggested edit and has revised the definition as suggested.

Environmental Requirements (§ 4284.907)

Comment: Two commenters suggest, in reference to working capital grants, replacing reference to Form RD 1940–22 with Form RD 1940–20. The commenters note that, for other Agency applications, the applicant provides Form RD 1940–20, and the Agency completes Form RD 1940–22.

Response: The Agency has revised this section to refer to Form RD 1940–20, rather than Form RD 1940–22.

Application Windows and Deadlines (§ 4284.915(d)(2))

Comment: One commenter states that the proposed rule indicates that the annual application period must be open within 60 days of the due date. However, due to the requirement to submit an independent feasibility study and business plan that is specific to the proposed project with working capital proposals, a 90-day application period seems more appropriate. This would allow for better and less costly studies, and be less likely to dissuade some applicants from applying.

Two commenters recommend providing a 90-day notice rather than a 60-day notice. One of the commenters states that, providing a 90-day notice is more useful to producers than a 60 day notice. While the existence of a fixed annual application deadline would allow farmers and support systems to be planning for applications throughout the year, the commenter's experience is that most new applicants only hear about the program once it is announced. Having the longer time frame helps increase the pool of eligible and qualified applicants, plus providing adequate time to adjust to any new changes in the annual NOSA.

The other commenter states that, due to the requirement to submit an independent feasibility study and business plan that is specific to the proposed project with working capital proposals, a 90-day application period seems more appropriate. This would allow for better and less costly studies, and be less likely to dissuade some applicants from applying.

One commenter notes that the **Federal Register** (Vol. 74, No. 168, 9/1/2009) states: "This notice announces the availability of approximately $18 million in competitive grants for FY 2009 to help independent agricultural producers enter into or expand value-added activities, with the following clarifications and alterations: (8) provides a 90-day application period." The commenter asks, going forward, will the 90-day period become standardized?

One commenter requests that the application period be open for 90-days to allow us the maximum amount of time to properly prepare and submit our grant request.

One commenter states that much more critical for the improvement of the VAPG program is not the date applications are due, but that the application window for applications will always be sufficiently long to allow applicants to develop good proposals. Thus, the rule should require that not less than 90 days be allowed from the time Rural Development invites applications to the time Rural Development closes its application window. The commenter further states that the proposed rule's provision that applications be submitted each year on or before March 15 is unwise. There is no way to assure this date will always be honored based on the experiences of any given fiscal year. The commenter states that the rule should state that application dates will be set by Rural Development annually via **Federal**

Register notice or in RD Instruction 1940–L.

Response: The Agency agrees that there should be at least a 60-day application window, but will provide notification via the annual NOFA rather than revising the rule text.

Applicant Eligibility (§ 4284.920)

Comment: One commenter believes that the definition of "beginning farmer or rancher," as it applies to group proposals, should be changed to fix a very serious problem with the proposed rule and suggests language for this. If the Agency does not change the definition, then the commenter recommends the following language be added under § 4284.920, as a new paragraph(c) as follows and re-designate the remaining sections accordingly:

(c) Beginning farmers or ranchers. To qualify for the priority for projects that contribute to opportunities for beginning farmers or ranchers or for the reserved fund for projects that benefit beginning farmers or ranchers, an applicant that is an agricultural producer group, a farmer or rancher cooperative, or a majority-controlled producer-based business venture must be comprised of at least 25 percent beginning farmers or ranchers.

Response: The statute provides a reservation of funding for projects "to benefit" Beginning Farmers and Ranchers. It is the position of the Agency that an applicant must meet the statutory definition of Beginning Farmer or Rancher to qualify for reserved funding. Therefore, the applicant must be an individual independent producer or an entity comprised of 100 percent Beginning Farmers or Ranchers.

The statute also gives priority to projects that "contribute to increasing opportunities" to Beginning Farmers or Ranchers. This priority is implemented through the award of additional points in the scoring process. It is the position of the Agency that entities comprised of at least 51 percent Beginning Farmers or Ranchers are eligible to receive priority points.

Comment: One commenter requests that the VAPG program not have a requirement to list owners and owners of owners. The commenter states that, when this requirement was in place in the past, it precluded them from applying for a grant at all. As a marketing association with nearly 400 members, the commenter states it is impossible for them to provide this information and hope this requirement will not be part of the upcoming grant program.

Response: The Agency has revised the definition of Farmer or Rancher Cooperative, Agricultural Producer Group and Independent Producer to allow members of applicant entities to be identified by individual name or by class.

Comment: One commenter applauds the Agency for eliminating previous language requiring cooperatives to identify all members of the cooperative. The rule as currently proposed provides reasonable eligibility requirements for cooperatives to apply for VAPG funding. Previous language should not be introduced in the final rule that would add the burdensome requirement of providing the names, addresses, etc. of all co-op members.

Response: As noted in the response to the previous comment, the Agency has revised the definitions of Farmer or Rancher Cooperatives to allow members of applicant cooperatives to be identified by individual name or by class.

Type of Applicant—Independent Producer (§ 4284.920(a)(1))

Comment: One commenter states that they have no written record of why they did not qualify for the VAPG, the awards for which were recently announced in late May 2010. The commenter states that, as a commercial fishing operation, they could not qualify for any of the 15 points associated with criteria, "Type of Applicant." This disqualification makes it extremely difficult, if not impossible, for commercial fishing families to earn sufficient points to win an award, though they were invited to apply. The criterion represents the largest block of points of any of the criteria. The fact that fishing families cannot receive these points is never mentioned in the application. The commenter states they spent months writing their grant; time they would not have spent had this crucial fact been made at all apparent. Without the benefit of actually reading the critique, it is their understanding that commercial fishing people are considered 'harvesters' not 'producers,' or some such hair-splitting that struggles to make meager sense. Therefore, they cannot be considered, as a "medium-sized farm or ranch that is structured as a family farm." Though water-based, commercial fishing families take as much care, attention and nurturance to their surroundings as any land-based agricultural operation. The Alaska salmon industry was first in the nation to receive the Marine Stewardship Council award for sustainable management of this precious national resource. That coveted award is proof positive that the fishing families foster and protect this resource with all the passion of a land based farm operation.

In addition, the commenter feels they fully qualify as a 'family farm' as defined in the context of the VAPG. The VAPG definition of a family farm is as follows; "A Family Farm produces agricultural commodities for sale in sufficient quantity to be recognized as a farm and not a rural residence, owners are primarily responsible for daily physical labor and management, hired help only supplements family labor, and owners are related by blood or marriage or are immediate family."

The commenter states their fishing boat is most assuredly not a recreational vessel, but a "machine shop on the water." The commenter and her husband are the primary owners and operators, working year around to keep the business afloat. They do hire seasonal helpers, but their labor is temporary and highly seasonal. The commenter states that she and her husband are related by 33 years of marriage and cannot understand why they would be considered anything other than a "family farm."

Response: It is Agency practice to provide feedback to applicants determined ineligible or which were unsuccessful in competition. Failure to do so was an oversight. The "Type of Applicant" category provided priority points for applicants that could document that they were Beginning Farmers or Ranchers, Socially-Disadvantaged Farmers or Ranchers, or proposing a Mid-Tier Value Chain. The Agency's position has been that Agricultural Harvesters, though considered Independent Producers, do not meet the definition of Farmer or Rancher.

Comment: One commenter notes that, in the past, eligible grantees have included such producers as fishers and forest gatherers. The commenter recommends that this be clearly reaffirmed in the new rule—it is implied, perhaps, but not clearly stated.

The commenter states that the proposed rule continues the requirement that every owner of the agricultural producer entity themselves be involved in farming. According to the commenter, this is a very unrealistic requirement. Recent USDA studies have noted that successful farms frequently rely on nonfarm income. Furthermore, family farms invariably become divided in their ownership among members who farm and members who retain a link to the farm but have moved off the farm. Therefore, the commenter recommends that the rule be revised to a simple requirement that the farm be operated by at least one owner of the farm entity.

Response: The Agency has revised Independent Producer definition to explicitly include "agricultural harvesters" such as foresters and fishermen and revised the definition of Agricultural Producer to indicate what constitutes direct involvement in farming.

Type of Applicant—Agricultural Producer Group (§ 4284.920(a)(2))

Comment: Numerous commenters recommend allowing producer groups or entities made up of more than 25 percent beginning farmers and ranchers to apply for the funds reserved by the Farm Bill specifically for projects benefitting beginning farmers and ranchers. The proposed rule dictates that all members of the farmer group or co-op must be beginning farmers or ranchers, a very unlikely situation in the real world. The requirement will preclude mentoring opportunities with more experienced farmers.

Three commenters point out that, while there are many new farmers and many of them will cooperate on these projects, it is the mentoring and collaboration with more experienced farmers that can ensure success. The more experienced farmers as well need to be supported and allowed to develop their businesses for the mutual benefit of the new farmers. Also, it is unlikely that all members of the farmer group or co-op would be beginning farmers or ranchers. Therefore, the Agency should ensure the final rule includes a reasonable standard to measure significant benefit to beginning farmers.

Response: The statute provides a reservation of funding for projects "to benefit" Beginning Farmers and Ranchers. It is the position of the Agency that an applicant must meet the statutory definition of Beginning Farmer or Rancher to qualify for reserved funding. Therefore the applicant must be an individual independent producer or an entity comprised of 100 percent Beginning Farmers or Ranchers.

The statute also gives priority to projects that "contribute to increasing opportunities" to Beginning Farmers or Ranchers. This priority is implemented through the award of additional points in the scoring process. It is the position of the Agency that entities comprised of at least 51 percent Beginning Farmers or Ranchers are eligible to receive priority points.

Emerging Market (§ 4284.920(b))

Comment: One commenter does not object to the expectation that all applicants, except Independent Producers, be subject to an emerging market test.

The commenter recommends that specific guidance about the characteristics or attributes of an "emerging market" be clearly stated in the rule. The commenter notes that the rule does not quantify or appear to give specific guidance to what constitutes an emerging market, particularly as it pertains to the amount of time that the applicant has been working in developing that emerging market. According to the commenter, previous interpretations of the emerging market rule were that applicants had to be active in that market less than 2 years at the time of application. The commenter states, however, it may entirely appropriate for such guidance to not be incorporated into this proposed rule, for two reasons:

First, during this current rule writing process, the VAPG program has experienced an extended period of time when no applications were received: *i.e.* July 2008, November 2009, and now presumably March 2011. The impact is that organizations that were not "ready" in 2008 or even parts of 2009 might not meet a 2-year emerging markets test if such were applied in a March 2011 application. This would unfairly disadvantage those particular applicants.

Second, there is merit in requiring an applicant to justify how the specific application meets the definition of an "emerging market."

Response: The Agency has revised the definition of Emerging Market to clarify its meaning and to indicate that in order to meet the definition, an applicant must not have supplied the product, geographic, or demographic market for more than two years at time of application submission.

Citizenship (§ 4284.920(c)(2))

Comment: One commenter states that the "51 percent citizenship" requirement is prohibitive for associations with large membership bases. Gathering ownership and citizenship information from hundreds of entities is impossible, not only because of the sheer number, but also because many simply will not share it for confidentiality reasons.

Response: The Agency agrees with the concern raised by the commenter. The grant agreement requires the grantee to certify that it meets the citizenship requirement. Information collection is not required.

Comment: One commenter recommends revising § 4284.920(c)(2) by replacing "immediate family member" with "entity owners," to clarify that at least one entity "owner" must be a citizen or national. Otherwise, as originally drafted, none of the owners would have to be citizens or nationals as long as they had one immediate family member meet citizenship requirements; thereby allowing a 100 percent non-US-owned entity to be eligible for public federal grant dollars.

Response: The Agency agrees that the suggested revision clarifies the intent of this paragraph and has revised the paragraph as suggested by the commenter.

Multiple Grant Eligibility (§ 4284.920(e))

Comment: One commenter believes allowing producers to submit separate VAPG applications under multiple entities provided the producer owns no more than 75 percent of any one of the entities is too generous and could lead to abuse and work against the wide distribution of VAPG assistance to many unaffiliated producers. The commenter recommends that the 75 percent level be either reduced to 5 percent or simply prohibited. According to the commenter, one VAPG per year is plenty for anyone given the scarcity of funds and the plethora of good ideas.

Response: The Agency disagrees with the commenter. Seventy-five percent is suitable to discourage multiple applications.

Comment: One commenter recommends revising § 4284.920(e) by replacing "this notice" with "a solicitation." According to the commenter, there is a need for applicants to explicitly designate the category in which they wish to compete so it is not a judgment call by reviewers.

Response: The Agency agrees that the suggested revision clarifies the intent of this paragraph and has revised the paragraph as suggested by the commenter.

Active VAPG Grant (§ 4284.920(f))

Comment: One commenter states that past VAPG rules have included similar provisions regarding active VAPG grants. However, 2009 was the first year that project periods could be as long as 36 months (as opposed to the previous 12 month limit). This means more repeat applicants are likely to have open projects when the next proposal period comes around. Also, the commenter would like clarification as to whether "within 90 days" means before or after the NOFA date.

The commenter adds that, like last year, VAPG projects were permitted to run up to 36 months. The 2009 rules contained a provision that projects running over 12 months had to have "unique tasks" each year, rather than a repeat of previous similar tasks (presumably such as advertising). The latter restriction is not included in the

proposed 2010 rule, which, based on past experience, does not necessarily mean that it would not be in the final rules and the commenter hopes it is not.

Response: The Agency does not agree with the commenter's assertion that active grant eligibility standard is a deterrent to repeat applicants. In order to continue to fund a diverse array of projects from as many applicants as possible, the Agency will retain the active grant eligibility standard that requires active grants to be closed within 90 days of the application submission deadline, as published in the annual NOFA.

In response to the comment on the requirement for ''separate and unique tasks'' for multi-year working capital grants, it is not included in the rule and will not be a program requirement.

Comment: Three commenters note that the requirement for an applicant with an active value-added grant at the time of a subsequent application to close out the current grant within 90 days of the annual NOFA could be a concern with project periods as long as 36 months. With the longer projects, more repeat applicants are likely to have open projects during subsequent proposal periods. One commenter expresses concern that meritorious projects benefiting significant numbers of producers would be excluded from consideration simply because a separate project was approved in a previous funding cycle. Perhaps there could be exceptions to this provision.

Two commenters note that, by adding arbitrary time constraints, such a prohibition would appear to undermine one of the goals of the program, in providing funding for projects that are likely to become self-sustaining in the future.

Response: The VAPG program is a popular and over-subscribed program. In order to continue to fund a diverse array of projects from as many applicants as possible, the Agency will retain the active grant eligibility standard.

Comment: One commenter recommends deleting "anticipated award date" in this section and substituting "application submission deadline" as a more stable date and requiring closeout of the prior grant more effectively to efficiently commence the undertaking of the new project, thereby promoting responsible use of public funds.

Response: The Agency agrees that "application submission deadline" is a more appropriate for closing date and has revised the rule text accordingly.

Project Eligibility (§ 4284.922)

Purpose Eligibility (§ 4284.922(b))

Comment: One commenter states that the Agency should clarify that majority, farmer-owned community wind projects are eligible this year, like they have been every year except for last round. The commenter further states the Agency should expand grant funding purposes such that funding can be used for farmer-owned community wind projects that are merchant plants (providing kilowatt-Hours to the grid) (as well as for on-site electrical needs). In Maine, like many deregulated electricity generation States, it is prohibited for a generation project larger than 660 kilowatt (kw) nameplate capacity to both provide electricity for on-site needs, and to sell excess generation to the grid. Maine law does allow net-metering to be used for generators with up to 660 kw nameplate capacity, but not for larger generators.

Response: The project eligibility category related to renewable energy was set by the 2008 Farm Bill and states that a Value-Added Agricultural Product is "a source of farm- or ranch-based renewable energy, including E–85 fuel." The Agency's position is that wind is not an agricultural commodity or a Value-Added agricultural product.

Comment: One commenter recommends revising § 4284.922(b)(1) by replacing "annually" with "in the annual" and adding reference to § 4294.915. The rule cites up to $500,000 grant amount, and the annual notice or solicitation will reduce that amount for both planning and working capital grants. The commenter suggests the following text:

The grant funds requested must not exceed the amount specified in the annual solicitation for planning and working capital grant requests, per § 4284.915.

Response: The Agency agrees with the suggested revision and has revised the paragraph as suggested by the commenter.

Comment: One commenter recommends adding a reference to conflict of interest in proposed § 4284.922(b)(2) for conformity with standard conflict of interest federal language. The commenter suggests that this paragraph be revised as follows:

(2) The matching funds required for the project budget must be eligible and without a real or apparent conflict of interest, available during the project period, and source verified in the application.

Response: The Agency agrees with the suggested revision and has revised the paragraph as suggested by the commenter.

Comment: One commenter recommends revising § 4284.922(b)(4) because it is the primary budget and work plan description of requirements, and should be augmented to include all necessary elements. The commenter suggests the following revised text:

(4) The project work plan and budget must:

(i) Present a detailed description of the eligible planning or working capital activities and specific tasks related to the processing and/or marketing of the value-added product, along with a detailed breakdown of all estimated costs associated with and allocated to those activities and tasks;

(ii) Identify the key personnel that will be responsible for overseeing and/or actually conducting the activities and tasks, and provide reasonable and specific timeframes for completion of the activities and tasks;

(iii) Identify the sources and uses of grant and matching funds for all activities and tasks specified in the budget, and indicate that matching funds will be spent at a rate equal to or in advance of grant funds; and

(iv) Present a project budget period that commences within the specified start date range indicated in the annual solicitation, concludes not later than 3 years after the proposed start date, and is scaled to the complexity of the project.

Response: The Agency agrees. The suggested additions are necessary for determination of eligibility.

Comment: Four commenters recommend that feasibility studies under § 4284.922(b)(5) not be required for simplified applications for working capital grants. The nature of projects applying via a simplified application is such that feasibility studies add little or no value in assessing the success of the venture. This eligibility requirement contributes little value to simplified projects, but significantly increases costs and burden for simplified applications.

Response: The Agency agrees with the commenters and has revised the rule to indicate that simplified applications for working capital grants of $50,000 or less are not required to submit feasibility studies or business plans, but must provide information demonstrating increased customer base and revenue expected to result from the project (see § 4284.922(b)(5)(ii)).

Comment: One commenter states that § 4284.922(b)(5) is the first of the operational provisions of the proposed rule that is in conflict with 7 U.S.C. 1621 (b)(1)(A) and (b)(3)(A) and with

§ 4284.923(a) of the proposed rule. To be in accord with the statute, the use of consultants may be encouraged but cannot be required and, therefore, recommended deleting "by a qualified consultant" from proposed § 4284.922(b)(5).

The commenter also stated that, to be consistent with the producer in-kind contribution of the proposed rule, producer in-kind matching contributions must be recognized in proposed 4284.922(b)(5) in order to avoid it seeming to override § 4284.923(a).

Response: The Agency disagrees that § 4284.922(b)(5) conflicts with 7 U.S.C. 1621 (b)(1)(A) and (b)(3)(A). The statute provides that grants are made to eligible applicants to "assist" in the development of feasibility studies, marketing plans, business plans. The manner in which the Agency directs that the funds be used beyond this statutory requirement is determined by Federal grant regulation and Agency policy.

Comment: One commenter does not believe that a good business plan must always or only be written by a third party. Rather, the commenter believes that the producer or producer group members planning the enterprise often have the "knowledge, expertise, and experience to perform the specific task required in an efficient, effective, and authoritative manner"—the proposed rule's definition for qualified consultant.

Furthermore, the rule gives the Agency the right and responsibility to assess the merits of the feasibility study and business plan, which removes any possible justification for having them done solely by non-producers. Grant applications are reviewed at the local, state and national level and proposal feasibility is a criterion for funding. Potential inadequacies with proposals can be determined in this review process without resorting to sweeping disqualifications that will make VAPG grants less accessible to the producers who need them most.

The commenter believes that dropping the reference to mandatory, exclusive use of qualified consultants is critical to conform to the statute and create an internally consistent rule, and recommends deleting reference to "by a qualified consultant" from § 4284.922(b)(5).

Response: The Agency disagrees with the suggested edit that would remove reference to a "qualified consultant." The Agency recognizes the value of producer participation in planning activities, while, at the same time acknowledging that an unbiased, third party is necessary for the evaluative portions of these activities. Therefore, the Agency will retain its requirement that feasibility studies be performed by independent third-parties. However, applicants (and applicant family members, as necessary) are encouraged to participate in the non-evaluative portions of planning grants and may contribute time as in-kind match amounting to up to 25 percent of total project cost, provided that a realistic and relevant valuation of their time can be documented, as described at § 4284.923.

Comment: One commenter supports the requirement that applicants for working capital be required to submit copies of their feasibility studies and business plans at the time of application. The commenter states that it is aware of applicants who have submitted working capital applications with the intent of "doing the paperwork" or "writing up the business plan" in the period of time after the announcement of the award of grant funds, but before the date when grant obligations must be honored.

The commenter recommends that the statute's requirement that there be a business plan should not prevent the use of VAPG to further plan branding activities and the rule should include this permission. The commenter points out that the VAPG statute includes among the five categories of "value-added agricultural product", "any agricultural commodity or product that * * * (ii) was produced in a manner that enhances the value of the agricultural commodity or product, as demonstrated through a business plan that shows the enhanced value * * *" According to the commenter, the Agency has consistently misapplied the language of the statute to assert that no planning activity involving branding or nonstandard production method could be supported by VAPG. The logic used was to say, the statute calls for a business plan, and therefore it must be that any and all planning has been completed and therefore no further planning is needed; leaving VAPG only to support working capital projects when branding/nonstandard production is proposed. According to the commenter, this interpretation overreaches the statute's mandate—yes, there must be "a business plan that shows enhanced value", but the nature of business planning is that such a plan is often an entrepreneur's first effort to outline a business strategy. This first step is prudently followed by further testing (through a feasibility study, for instance) and elaboration (through a marketing plan, for instance).

Response: The statutory language has been interpreted to mean that the Secretary may determine whether a business plan requirement for this category is in the best interest of the program. The Secretary has determined that the business plan is not in the best interest of the program at this time. As a result, a business plan is no longer required for this product eligibility category and the category is open to both planning and working capital applicants.

Comment: One commenter recommends clarifying § 4284.922(b)(6) because, according to the commenter, not all applicants will know there is a definition for, or remember to check, the definition for, "emerging market," and may jump to their own conclusions about what that means. The suggested revised text would read as follows:

(6) If the applicant is an agricultural producer group, a farmer or rancher cooperative, or a majority-controlled producer-based business, the applicant must demonstrate that it is entering an emerging market unserved by the applicant in the previous two years.

Response: The Agency disagrees with the suggested revision because the definition is sufficient and is more explicit than the text suggested by the commenter. Therefore, the Agency has not revised this paragraph as suggested.

Comment: One commenter states that agricultural producer groups are at an immediate disadvantage because of not being eligible for the Reserved Funds pool. If the program still intends to benefit producer groups, a portion of the funds could be reserved for these applicants.

Response: If by "producer groups," the commenter means farmer or rancher cooperatives, the Agency has determined to assign priority scoring points to cooperatives in the "Priority Points" scoring criterion. The Agency is unable to assign a portion of reserved funds to cooperatives, because reserved fund priorities are set by statute.

Branding Activities (Proposed § 4284.922(c))

Comment: Numerous commenters express concern over the 25 percent limitation on branding activities, recommending either removing it in its entirety or lowering the 25 percent. The specific comments received are presented below.

Three commenters recommend not capping branding/marketing activities. One of the commenters understands that the original intent of the VAPG program was a pronounced focus on enhancing marketing and related activities. From the commenter's perspective, branding

is an essential component of a marketing strategy/plan. As an eligible grant category (*e.g.* marketing activities), it should not be capped. If the regulatory interpretation is different, the terms branding and product differentiation should be defined in the § 4284.902, with examples provided for both eligible and ineligible activities.

One commenter states that limiting these very valuable tools to 25 percent (or any significant limitation) would impact a large number of applicants, raise interpretation issues, and seems to directly conflict with the purpose of the VAPG program. The commenter is uncertain of the purpose of limiting some of the most important tools to accomplish the goals of the VAPG program.

There are many examples of value created by packaging and branding alone. For example, a current Frito Lay campaign for its Sun Chips brand touts "The World's First 100% Compostable Chip Bag"; the proposed rules would exclude growers from VAPG funding to add value with similar green packaging.

The term "product differentiation" covers a lot of territory; product differentiation in several forms is the very purpose of a value-added process. Asking one to create a value-added product without product differentiation is arguably an oxymoron.

One of the commenters states that as an agricultural producer group, branding activities are primarily what they do and hopes that there will not be restrictions placed on this very important part of their activities under which they might apply for grant consideration.

One commenter states that the branding, packaging, or product differentiation activities percent should not be more than 10 percent of the total project cost (for those projects that otherwise eligibility under one of the five value-added methodologies specified in paragraphs (1)(i) through (v) of the definition of a value-added agriculture product). If the proposed activities exceed 10 percent, this could put the feasibility of the project at a higher risk. There is an indication in the VAPG program that branding activity type proposals have not provided strong, detailed evidence that the income estimated is actually realistic. Packaging can be somewhat of a risky, feasible expense, in terms of can it make enough difference in a new value-added venture. These activities proposed at 25 percent of the total project cost could put the project in a high risk situation. A quarter of the project is too much to allow to be at risk, for a value-added project to be assisted with federal government dollars.

One commenter states that some cooperatives have built recognized name brands, which has helped build consumer loyalty and confidence and help to differentiate products in a competitive marketplace. The VAPG has been instrumental in leveraging farmers' investment in their own products to create and expand markets. The earnings from those sales flow through the cooperative to the farmer-members ultimately increasing their income.

However, the proposed rule states: "Branding activities. Applications that propose only branding, packaging, or other similar means of product differentiation are not eligible under this subpart. However, applications that propose branding, packaging, or other product differentiation activities that are no more than 25 percent of total project costs of a value-added project for products otherwise eligible in one of the five value-added methodologies specified in paragraphs (1)(i) through (v) of the definition of value-added agricultural product are eligible."

Limiting those activities to 25 percent (or any significant percentage) would constrain the ability of organizations to use some of the best marketing tools available to expand marking opportunities. This seems to be in direct conflict with the purpose of the VAPG program.

One commenter points out that its members have built recognized name brands, which has in turn built consumer loyalty and confidence, differentiating their products in a competitive marketplace. The VAPG program has been instrumental in leveraging farmers' investment in their own products to create and expand markets. The earnings from those sales flow through the cooperative to the farmer-members ultimately increasing their income. The commenter states that limiting those activities to 25 percent (or any significant percentage) would constrain the ability of organizations to use some of the best marketing tools available to expand marking opportunities. This is in direct conflict with the purpose of the VAPG program. Thus, the commenter recommends removing this limitation from the rule.

One commenter states that it is unclear as to what issue or program outcome is being addressed by the proposed limitation on the amount of expenditures that can be used for "branding, packaging, and product differentiation." For a value-added consumer product, product differentiation is a critical element of developing an alternative market proposition. Use of packaging and branding are sometimes absolutely essential to that process. Funding for these types of activities, especially for small ventures, is perhaps the most useful part of the Working Capital program, as these dollars are incredibly hard to come by for most producer-owned ventures that we are familiar with. Thus, limiting expenditures to 25 percent of total project costs seem to arbitrarily limit the usefulness of the program to producers. The limitation is also vague: What expenses would be included in the limitation? Ad copy development? PR consultants? Sales samples? Demos? All activities that can be construed as "branding and differentiation"? The commenter suggests that, if there is to be a limitation on branding, packaging and product differentiation, a more reasonable limit might be 50 percent of total project expenses. The commenter's work with over 25 applications in 8 years suggests that their clients have requested a maximum of marketing related expenses between 25 and 50 percent of total project costs.

One commenter states that the VAPG statute includes among the five categories of "value-added agricultural product," "any agricultural commodity or PRODUCT that * * * (ii) was produced in a manner that enhances the value of the agricultural commodity or product." According to the commenter, RD recently changed its rules to limit this category to commodities grown in a "nonstandard" manner, such as organic. Note that the statute is not restricted to just the way a commodity is raised; it also recognizes that PRODUCTS also have value-added to them through the way they are produced. Quite simply, this means that branding is an allowable, bona fide value-added activity supported by VAPG statute. The ability to use VAPG to promote branding should be permitted. The proposed rule would restrict branding to just 25 percent of a VAPG grant's purpose. This percentage is arbitrary to begin with, and it also begs the question, if branding is 25 percent eligible, must not it be 100 percent eligible? The answer is, by statute, it is entirely eligible and should be entirely permitted.

One commenter states that the verbiage in proposed § 4284.922(c) is problematic for many of its members. Building a brand name is one goal of creating value-added products. Brand names help create consumer confidence and loyalty in a competitive marketplace. The VAPG has been instrumental in leveraging farmers' investments in their own brands to

create and expand markets. The earnings from those sales flow through the cooperative to the farmer-members ultimately increasing their income. Limiting those activities would constrain the ability of organizations to use some of the best marketing tools available to expand marketing opportunities. This seems to be in direct conflict with the purpose of the VAPG program.

One commenter believes the 25 percent cap is not needed as long as the eligible product for the project meets one of the five value-added methodologies and the other project eligibility criteria. However, if capped, the program will need to define or illustrate what budget activities constitute "branding" in order to calculate and confirm that application expenses do not exceed the limitation in the budget. This commenter states that, for clarity of branding eligibility message, the language should be revised to read, "no more than 25 percent of the total project costs of a value-added project with products otherwise eligible, having resulted from one of the five value-added methodologies."

Response: The Agency recognizes that branding and packaging are important components of value-added marketing strategies. In consideration of all of these comments, the Agency has removed in its entirety proposed § 4284.922(c), which would have imposed a 25 percent limitation on the uses of grant and matching funds for these activities. Thus, the rule does not contain any funding limitation on eligible branding and packaging activities proposed as part of an otherwise eligible project.

Reserved Funds Eligibility (Proposed § 4284.922(d))

Comment: One commenter recommends revising proposed § 4284.922(d) by adding "if applicants choose to compete for reserved funds" for clarification and to record documentation standards to read as follows:

In addition to the requirements specified in paragraphs (a) through (c) of this section, the requirements specified in paragraphs (d)(1) and (2) of this section must be met, as applicable, if applicants choose to compete for reserved funds. All eligible, but unfunded reserved funds applications will be eligible to compete for general funds in that same fiscal year, as funding levels permit.

Response: The Agency agrees with the suggested revision and has revised the rule accordingly (*see* § 4284.922(c)).

Reserved Funds Eligibility (Proposed § 4284.922(d)(1))

Comment: One commenter recommends revising proposed § 4284.922(d)(1), stating that documentation standards need to be specified in the rule to establish uniform expectations, and to be enforceable for eligibility determinations. The commenter suggested the following text:

(1) If the applicant is applying for beginning farmer or rancher, or socially-disadvantaged farmer or rancher reserved funds, the applicant must provide the following documentation to demonstrate that the applicant meets all requirements for one of these definitions.

For beginning farmer or rancher, documentation must include a description from each of the individual owner(s) of the applicant farm or ranch organization, addressing the qualifying elements in the BFR definition, including the length and nature of their individual owner/operator experience at any farm in the previous 10 years, along with one IRS income tax form from the previous 10 years showing that each of the individual owner(s) did not file farm income; or a detailed letter from a CPA or attorney certifying that each owner meets the reserved funds BFR eligibility requirements.

For socially disadvantaged farmer or rancher, documentation must include a description of the applicant's farm or ranch ownership structure and demographic profile that indicates the owner(s)' membership in a socially disadvantaged group that has been subjected to racial, ethnic or gender prejudice; including identifying the total number of owners of the applicant organization, as well as the number of owners that identify themselves as a SDFR; along with a self-certification statement from the individual owner(s) evidencing their membership in said socially disadvantaged group. At least 51 percent of the farmer or rancher owners must be members of the socially disadvantaged group.

Response: The Agency agrees with the suggested revisions and has revised the rule as suggested by the commenter except for the suggested text that 51 percent of the owners must be members of socially-disadvantaged groups. Instead, the Agency is requiring that, for reserved funding, 100 percent of owners must be members of socially-disadvantaged groups. This requirement is set by statute.

Reserved Funds Eligibility (Proposed § 4284.922(d)(2))

Comment: One commenter recommends clarifying proposed § 4284.922(d)(2) to read as follows:

(2) If the applicant is applying for mid-tier value chain reserved funds, the application must provide documentation demonstrating that the project meets the Mid-Tier Value Chain definition, and must:

Response: The Agency agrees with the suggested revision and has revised the paragraph as suggested by the commenter.

Comment: One commenter recommends revising proposed § 4284.922(d)(2)(i) by adding reference to commodities and value-added, because both terms are possible in this MTVC context, to read in part: "Through which agricultural commodities and value-added products move from production through consumption."

Response: The Agency agrees with the suggested revision and has revised the paragraph as suggested by the commenter.

Comment: One commenter recommends revising proposed § 4284.922(d)(2)(ii) by adding reference to commodities for consistency with the combined agricultural product/agricultural commodities definition.

Response: The Agency agrees with the suggested revision and has revised the paragraph as suggested by the commenter. The Agency also revised this paragraph to make reference to value-added products as part of the revision to the definition referenced by the commenter.

Comment: One commenter states that proposed § 4284.922(d)(2)(ii) requires applicants to "describe at least two alliances, linkages or partnerships", whereas proposed § 4284.922(d)(2)(iv) requires the applicant to document that they have "obtained at least one agreement with another member of the supply network." The commenter asks: Are alliances materially different from agreements? Thus, is it one or two alliances? Do two alliances only apply to applicants that are Independent Producers?

Response: For the purposes of § 4284.922(d)(2)(ii), alliances are different from agreements. An alliance is a relationship or strategic partnership in the chain that may or may not include a formal written commitment. An "agreement" is a written commitment in the form of a contract or letter of intent.

In addition to the other requirements described in § 4284.922(d)(2), the application must describe "at least two

alliances, linkages, or partnerships, plus one agreement." This is a requirement of all applicant types, not just Independent Producers.

Comment: One commenter states that the reserved funds eligibility section (proposed § 4284.922(d)(2)(ii)) would be improved by allowing linkages with "other independent producers" such that this paragraph would read as follows:

(d)(2)(ii) Describe at least two alliances, linkages or partnerships within the value chain that link independent producers with other independent producers or with businesses and cooperatives that market value-added agricultural products in a manner that benefits small or medium-sized farms and ranches that are structured as a family farm, including the names of the parties and the nature of their collaboration;

Response: The Agency disagrees as this portion of the eligibility requirement is based on the statutory definition of Mid-Tier Value Chain.

Comment: One commenter recommends expanding "mid-tier value chain" projects to include those that market farm-sited renewable energy products. There is a recognizable, but undervalued niche to farmer-owned wind generation.

Response: The Agency disagrees with the commenter's recommendation. The project eligibility category related to renewable energy was set by the 2008 Farm Bill and states that a Value-Added Agricultural Product is "a source of farm- or ranch-based renewable energy, including E–85 fuel". The Agency's position is that wind is not an agricultural commodity or a Value-Added agricultural product. Thus, the Agency has not revised the rule as suggested by the commenter.

Comment: One commenter recommends adding a new category of funding for "locally-produced agricultural-sited energy projects"; similar to the new category "locally-produced agricultural food products".

Response: The Agency disagrees with the commenter's recommendation. The project eligibility category related to renewable energy is prescribed by statute.

Comment: One commenter recommends spelling out documentation requirements and expectations for applicant awareness and uniformity in implementation in proposed § 4284.922(d)(2)(iii). The commenter recommends that this paragraph read as follows:

(iii) Demonstrate how the project, due to the manner in which the value-added product is marketed, will increase the profitability and competitiveness of at least two, eligible, small or medium-sized farms or ranches that are structured as a family farm, including documentation to confirm that the participating small or medium-sized farms are structured as a family farm and meet these program definitions. A description of the two farms or ranches confirming they meet the Family Farm requirements, and IRS income tax forms evidencing eligible farm income is sufficient;

Response: The Agency agrees with the suggested revision and has revised the paragraph as suggested by the commenter.

Comment: One commenter recommends spelling out documentation requirements and expectations for applicant awareness and uniformity in implementation in proposed § 4284.922(d)(2)(iv). The commenter recommends that this paragraph read as follows:

(iv) Document that the eligible agricultural producer group/cooperative/majority-controlled producer-based business applicant organization has obtained at least one agreement with another member of the supply network that is engaged in the value-chain on a marketing strategy; or that the eligible independent producer applicant has obtained at least one agreement from an eligible agricultural producer group/cooperative/majority-controlled producer-based business engaged in the value-chain on a marketing strategy.

For Planning grants, agreements may include letters of commitment or intent to partner on marketing, distribution or processing; and should include the names of the parties with a description of the nature of their collaboration. For Working Capital grants, demonstration of the actual existence of the executed agreements is required.

Note that Independent Producer applicants must provide documentation to confirm that the non-applicant APG/Coop/MAJ partnering entity meets program eligibility definitions, except that, in this context, the partnering entity does not need to supply any of the raw agricultural commodity for the project.

Response: The Agency agrees with the suggested revisions and has revised the rule as suggested by the commenter.

Comment: In referring to proposed § 4284.922(d)(2)(v), one commenter states that the proposed rule continues the requirement that the applicant be the producer of the majority of the commodity to which value is added. According to the commenter, this is a very unrealistic requirement, particularly to small producers who, if they have a promising value-added product, must quickly outstrip their own agricultural production levels. In Oregon, for example, the commenter stated that we have again and again seen bona fide farmers with exciting value-added products disqualified by this rule. In order for a farmer to justify capital costs to produce a value-added product, they need commodity in volume, and thus they turn to neighboring farmers to supplement their own crops. To limit VAPG to producers growing 50 percent or more of the commodity as we currently do, too often mean limiting VAPG's assistance for unviable, undercapitalized enterprises. Instead, the rule could retain its purpose—to assure that VAPG assistance goes to producers and not processors—by reducing the requirement and only insisting that the producer raise 10 percent or more of the commodity to which value is added.

Response: The Agency disagrees. Applicants have a number of options to form entities with other producers prior to application, which would allow them to aggregate necessary product volume for a project.

Eligible Uses of Grant and Matching Funds (§ 4284.923)

Comment: One commenter states that there needs to be some investigation of these grants beyond believing what is written. The commenter states that recent grants to this area are "sinful" and contends that giving money for unneeded research to millionaires makes no sense. Example one was given a few years ago to research feasibility of making/selling hard cider. The commenter states that a State university had already done a study and that there were existing cider makers in that State. A new grant for $150K was just given to an applicant and the commenter expressed views about the use of funds in previously conducted studies.

Response: The Agency disagrees. Grants are made to eligible producers of all sizes, including small farmers. Funds for planning purposes are intended to evaluate feasibility at the individual enterprise level, which precludes the use of studies performed for other businesses.

Comment: One commenter recommends clarifying the language as to whether stand-alone marketing programs (completely independent from the processing) are eligible. The commenter also recommended more clearly defining the term "branding."

Response: As noted in a response to previous comments, the Agency recognizes that branding and packaging

are important components of value-added marketing strategies and, subject to the satisfaction of all other eligibility criteria, the rule no longer has any funding limitation on the uses of grant and matching funds for these activities.

Planning Funds (§ 4284.923(a))

Comment: Numerous commenters recommend keeping the business and enterprise planning of VAPG projects farmer-centered. The proposed rule includes conflicting provisions on this matter.

Helpfully, it says farmers may count their time spent on development of business and marketing plans as an in-kind contribution for purposes of matching funds. Yet the rule also includes conflict of interest rules and several program definitions that seem to prohibit active participation by the producer in project development and planning. This undermines the fundamental principle of the VAPG program: That farmers and ranchers should be empowered through these grants to explore creative new businesses that will increase farm income and create rural wealth. USDA should ensure that the final rule is totally consistent on this point—farmers and ranchers should directly participate in the development of VAPG projects and be allowed to count their time as a contribution toward the program's matching requirements.

Response: The Agency recognizes the necessity and benefit of direct participation of farmers and ranchers in project development and planning. The Agency also recognizes the necessity of independent, third party analysis of project feasibility. Therefore, the Agency will allow applicants to participate in the direction and data collection of the analysis and allow contribution of time valued at up to 25 percent of total project costs as in-kind match. The applicant must be able to document the valuation of time contributed.

Comment: One commenter states that elements of the proposed rule that contradict the statute and the statement in § 4284.923(a) providing for in-kind matching for participation in development of business and marketing plans should be corrected so the rule as a whole is consistent and clear and does not lead to arbitrary implementation decisions. The commenter is concerned that a variety of sections in the proposed rule contradict, or at the very least confuse, the otherwise clear directive in the proposed rule that farmers and ranchers are encouraged to write or help write business and marketing plans for their proposed projects and have the time they invest in the work accepted as an eligible in-kind match for a grant.

The statute clearly states that grants will be awarded to: An eligible independent producer (as determined by the Secretary) of a value-added agricultural product to assist the producer "(i) in developing a business plan for viable marketing opportunities for the value-added agricultural product ; or (ii) in developing strategies that are intended to create marketing opportunities for the producer". (7 U.S.C. 1621 (b)(1)(A))

Preserving this producer-centered approach to grants is fundamental to VAPG's success. Our member organizations that have been engaged in education and technical assistance on VAPG grants believe that successful value-added projects are the result of a profound understanding of the complexities of farming businesses that can only be provided by the farmers and ranchers who will be participating in the enterprise. Conversely, projects that fail most often do so because they did not incorporate the insights and experience of the producers the business will rely on for its success.

Response: The Agency recognizes the value of producer participation in Planning activities, at the same time acknowledging that an unbiased, third party is necessary for the evaluative portions of these activities. Therefore, the Agency will retain its requirement that feasibility studies be performed by independent third-parties with the only limitation on applicant involvement being the provision a § 4284.923 that allows applicants to claim time on Planning grants as in-kind match amounting to up to 25 percent of total project costs, provided that a realistic and relevant valuation of their time can be documented.

Comment: One commenter recommends emphasizing the importance of the marketing element of the VAPG Marketing Grant. Having the funds to come out of the gate with a great marketing plan is imperative particularly when you are involved in a competitive industry such as wine production. The commenter attached one of their labels where marketing has been key to its success which has contributed to the early success and profitability of this particular wine.

Response: The Agency agrees with the commenter's suggestion to emphasize the marketing element of the program and has revised the rule to remove limitations on funding of branding and packaging activities.

Comment: One commenter states that, as in the proposed rule, the final rule should allow for grant payment and in-kind matching credit for producer participation in the development of business and marketing plans, but also extend the same treatment to feasibility studies.

The 2009 VAPG NOFA for the first time explicitly excluded farmer and rancher time as an allowable in-kind contribution for planning grants, substantially reducing the number of applicants that had the means to apply and reversing almost a decade of understanding in the field of how the VAPG grant works. This was a serious mistake that would do severe damage to the program if left uncorrected.

VAPG grants are at their core producer grants for entrepreneurial producer-based projects. It is vital that producers be able to contribute their sweat equity to building and launching their project. Participation by consultants and outside experts can also be very important. But the program should not ever be viewed primarily as a grant program that passes funding through farmers and ranchers to paid outside consultants. Such a view is contrary to law and contrary to the intent of Congress in designing the program.

In addition to providing grant funds to pay for the time of the applicant or the applicant's family members in the project, it is also critical that producers be able to choose to contribute in-kind services as part of their matching requirements. If they were not allowed to do so, it would tilt the program to only the well-off, those with access to sufficient capital to fully fund their match requirements. Such a result would contradict the very reason for the program's existence.

The commenter strongly supports the provision at § 4284.923(a) and urges that it be retained, but also strengthened, in the final rule. The final rule on this point should be strengthened in two ways. First, the proposed rule's preamble refers appropriately to both the applicant and the applicant's family. The sentence in § 4284.923(a), however, refers only to the applicant and does not mention the applicant's family. This oversight should be fixed by adding a specific reference to the applicant's family, to match the clear intent as rendered in the preamble.

Second, the major element that is still missing from this provision in § 4284.923(a) is an allowance for producer participation in planning grants and for in-kind producer matching contributions in the development of a value-added business feasibility study. The statute is reasonably clear on this matter: A grantee under paragraph (1) shall use

the grant—(A) to develop a business plan or perform a feasibility study to establish a viable marketing opportunity for a value-added agricultural product; (7 U.S.C. 1621(b)(3)(A)).

The statute provides that producers may perform feasibility studies as part of planning grants. If a producer receiving an award can use the grant to themselves perform a feasibility study then certainly they should also be able to count portions of their time working on a feasibility study as an in-kind match.

Feasibility studies can be conducted by a qualified consultant, and in many cases should be, but with input and contributions from the producer(s). The commenter notes that marketing and business plans are critical components for the feasibility study and the proposed rule in § 4284.923(a) already allows producers and their families to count their marketing and business plan development time as part of their in-kind match. It would be logically inconsistent to say they can count time toward the two critical components of the feasibility study, but not the feasibility study per se. Moreover, consultants will be relying on the producer(s) to supply much of the additional information that will provide the basic background and parameters of the feasibility study without which they cannot proceed. For these reasons, the commenter recommends adding an explicit reference to feasibility studies to § 4284.923(a).

To address both of these issues—family members and feasibility studies—the commenter recommends modifying § 4284.923(a) as follows:

(a) Planning funds may be used by applicants for the costs associated with conducting and developing a feasibility study, business plan, and/or marketing plan associated with the processing and/or marketing of a value-added product, including costs required to pay for a qualified consultant to conduct and develop a feasibility study, business plan, and/or marketing plan associated with the processing and/or marketing of a value-added product. In-kind contribution of matching funds to cover applicant or family members of the applicant participation in development of feasibility studies, business plans and/or marketing plans is allowed to the extent that the value of such work can be appropriately valued. Funds may not be used to evaluate the agricultural production of the commodity itself, other than to determine the project's input costs related to the feasibility of processing and marketing the value-added product.

Response: The Agency recognizes the value of producer participation in Planning activities, at the same time acknowledging that an unbiased, third party is necessary for the evaluative portions of these activities. Therefore, the Agency will retain its requirement that feasibility studies be performed by independent third-parties. Applicants (and applicant family members, as necessary) are encouraged to participate in the non-evaluative portions of the study and may contribute time as in-kind match amounting to up to 25 percent of total project cost, provided that a realistic and relevant valuation of their time can be documented. The Agency considers the use of grant funds for direct personal financial gain to be a conflict of interest and will continue to prohibit use of grant funds to pay applicant/applicant family member salaries.

Comment: One commenter believes planning grants should allow for producer involvement in feasibility studies, and for them to count their time as in-kind match. The proposed rule makes progress in this area by recognizing the importance of their involvement in business and marketing planning, but is still lacking regarding feasibility studies. Working with many farmers and ranchers over the years, their involvement in all aspects "feasibility studies, business planning and marketing planning" was absolutely key to successful projects. Through the feasibility studies they have helped with in the past, the farmers or ranchers have assisted with surveys, product testing, data collection, and many other activities. This work was critical for compiling the feasibility study.

Also, all of the farmers and ranchers they were seeking to assist during the 2009 VAPG round dropped out because they were not able to count their time as in-kind match for these activities. To ensure this program serves the folks it is designed to make a priority (small and mid-size family farmers and ranchers) the in-kind contribution in this regard must be fixed and their involvement in feasibility studies must be allowed to be counted as in-kind contributions. In the absence of such they will only stand to serve the well-healed who do not need the assistance in order to launch a value-added business.

Response: The Agency recognizes the value of producer participation in Planning activities, at the same time acknowledging that an unbiased, third party is necessary for the evaluative portions of these activities. Therefore, the Agency will retain its requirement that feasibility studies be performed by independent third-parties. Applicants (and applicant family members, as necessary) are encouraged to participate in the non-evaluative portions of the study and may contribute time as in-kind match amounting to up to 25 percent of total project cost, provided that a realistic and relevant valuation of their time can be documented.

Comment: One commenter recommends revising § 4284.923(a) to reflect more recent RBS determinations to allow limited applicant and family member in-kind contributions for planning grant match purposes, and to establish implementation parameters to balance applicant in-kind contributions with federal conflict of interest law. The Agency may consider limiting this conflict of interest exception for planning grants only to applicants that are "Small-Farms structured as a Family Farm"; "to 10 percent of total project costs for planning grants"; or "for all planning grant applicants that seek grant amounts of $50,000 or less as part of a simplified grant request." conflict of interest and applicant in-kind contribution issues have been highly problematic in the past, and account for a large percentage of applications submitted but deemed ineligible due to conflict of interest. Federal procurement standards prohibit transactions with a real or apparent conflict of interest, including owner and family member in-kind contributions. If an exception is allowed as above, the regulation must be clear as to what is and is not acceptable in order to mitigate this issue going forward.

Response: The Agency recognizes the value of producer participation in Planning activities, at the same time acknowledging that an unbiased, third party is necessary for the evaluative portions of these activities. Therefore, the Agency will retain its requirement that feasibility studies be performed by independent third-parties. Applicants (and applicant family members, as necessary) are encouraged to participate in the non-evaluative portions of the study and may contribute time as in-kind match amounting to up to 25 percent of total project cost, provided that a realistic and relevant valuation of their time can be documented. In addition, applicants for Working Capital grants may also contribute their time on eligible working capital tasks as in-kind match amounting to up to 25 percent of total project cost, provided that a realistic and relevant valuation of their time can be documented.

Working Capital Funds (§ 4284.923(b))

Comment: One commenter asks if this is a new clause (exclusion of grant funds

for an owner's salary for eligible activities) or has this always been the case? Are owners able to use time spent processing and/or marketing and delivering the value-added product as an in-kind match? The commenter believes eligible grant activities should qualify to receive federal funds or to be used for match (cash and in-kind) to the greatest extent possible—the only possible exception would be applicant time spent on the feasibility study.

Response: The Agency considers the use of grant funds for direct personal financial gain to be a conflict of interest and will continue to prohibit use of grant funds to pay applicant/applicant family member salaries. However, the Agency recognizes the value of producer participation in Planning activities, as well as the necessity of participating in eligible marketing activities. Therefore, both Planning and Working Capital applicants (and applicant family members, as necessary) may contribute time spent on eligible activities as in-kind match amounting to up to 25 percent of total project cost, provided that a realistic and relevant valuation of their time can be documented, as provided for at § 4284.923.

Comment: One commenter recommends expanding § 4284.923(b) to allow the payment of salaries to owners/family members of the value-added venture. The VAPG primary objective, as defined in this proposed rule, is to help the independent producer of agricultural commodities increase the producer's income as the end goal. The commenter believes that it is counterintuitive to say that paying an owner or family members to run their business is a conflict of interest. The commenter understands that and agrees that the amount paid has to be reasonable and has to be commensurate with the duties preformed.

To say that it is an eligible cost to pay someone else to run their business but that it is not an eligible cost to pay themselves a reasonable wage to run their business does not make sense. The commenter asks the Agency to consider making this change to 7 CFR parts 4284 and 1951. If not, then the rule needs to be stated such that this is not an allowable expense and needs to be specifically listed in § 4284.924.

Response: The purpose of the program, as given in § 4284.901, is to "enable viable agricultural producers to develop businesses that produce and market value-added agricultural products." The Agency considers the use of grant funds for direct personal financial gain to be a conflict of interest and will continue to prohibit use of grant funds to pay applicant/applicant family member salaries. However, the Agency recognizes the value of producer participation in Planning activities, as well as the necessity of participating in eligible marketing activities. Therefore, both Planning and Working Capital applicants (and applicant family members, as necessary) may contribute time spent on eligible activities as in-kind match amounting to up to 25 percent of total project cost, provided that a realistic and relevant valuation of their time can be documented, as provided for at § 4284.923.

Comment: One commenter states that, for stand-alone marketing programs, which do not lend themselves to creating feasibility or business plans, a marketing plan with clear results should be sufficient.

Response: If the commenter use of "stand-alone marketing programs" refers to applicants already producing a value-added product, but desiring to expand their market, the Agency agrees that a feasibility study is unnecessary. However, the Agency disagrees that a business plan is unnecessary. The Agency has revised the rule to allow Independent Producer applicants requesting $50,000 or more who can demonstrate that they are proposing market expansion for existing value-added products to submit a business or marketing plan in lieu of a feasibility study (see § 4284.922(b)(5)(i)).

Comment: One commenter states that the working capital paragraph at § 4284.923(b) needs to clarify that grant payment of salaries, etc. to not only ownership, but also "immediate family interests" constitutes a conflict of interest and is prohibited.

Response: The Agency agrees with the commenter and has revised the rule accordingly.

Ineligible Uses of Grant and Matching Funds (§ 4284.924)

Comment: Four commenters state that this section should clearly state which uses of funds are ineligible. For example, the rule should clearly state applicants are not allowed to use grant funds for owner salaries. It is unnecessarily confusing to imply such expenses are ineligible because they are a conflict of interest.

Response: The Agency agrees with the commenter and has revised this section accordingly. In addition, the Agency notes that the rule now clearly states that applicants are not allowed to use grant funds for either owner salaries or for immediate family member salaries (see § 4284.924(n)).

Comment: Several commenters state that this section should clearly state if some uses of funds are eligible as matching funds, but are not an eligible use of grant funds. Section 4284.931(b)(4)(i) of the rule states: "Matching funds are subject to the same use restrictions as grant funds," but this has not been the practice. For example, the rule should clearly state if applicants are allowed to contribute inventory they have produced as a match, but cannot use grant funds to purchase the same inventory from themselves.

Response: The Agency agrees and has provided clarification and additional examples at §§ 4284.923 and 4284.924. However, it is unrealistic to anticipate and list every possible example and, therefore, the Agency must have the ability to exercise discretion.

Comment: One commenter states that, as a small producer, he believes that eliminating the ability of a producer to use in kind options to help match grant funds would disadvantage many lower income participants. Driving the grant/research sector into the hands of corporate, state, and entities other than small farmers is obviously not in the spirit of the program, and the commenter states that this direction would be a move towards much more severe conflicts of interest between the reciprocation of officials between government agencies and corporations. The commenter believes these grant funds are best spent with our local producers, not on what the commenter perceives of as wasteful university research, and contends that local producers are more efficient at disposing of funds than almost any other type of researchers.

Response: The Agency recognizes the value of producer participation in planning activities, at the same time acknowledging that an unbiased, third party is necessary for the evaluative portions of these activities to assist the Agency determining the merits of a particular applicant's planned activities. Therefore, the Agency will retain its requirement that feasibility studies be performed by independent third-parties. Applicants (and applicant family members, as necessary) are encouraged to participate in the non-evaluative portions of the study and may contribute time as in-kind match amounting to up to 25 percent of total project cost, provided that a realistic and relevant valuation of their time can be documented.

Comment: One commenter recommends allowing applicants to be paid for professional services, as eligible project costs.

Response: The Agency considers the use of grant funds for direct personal financial gain to be a conflict of interest

and will continue to prohibit use of grant funds to pay applicant/applicant family member salaries. However, the Agency recognizes the value of producer participation in Planning activities, as well as the necessity of participating in eligible marketing activities. Therefore, both Planning and Working Capital applicants (and applicant family members, as necessary) may contribute time spent on eligible activities as in-kind match amounting to up to 25 percent of total project cost, provided that a realistic and relevant valuation of their time can be documented, as provided for at § 4284.923.

Comment: One commenter states that, with regard to ineligible matching funds—donated services that are also paid for with VAPG funds—if a consultant or other party will receive cash payments from the VAPG project, a conflict of interest exists as to the donation of their services. For instance, a consultant should not be able to set a high price for their services and then "donate" some of that price as match. This should be expressly prohibited.

Response: The Agency does not agree that a change to the rule is necessary because it would limit the ability of smaller applicants to utilize the services of consultants.

Comment: One commenter states that, with regard to ineligible matching funds—commodity, the existence of a crop is a necessary precondition of any value-adding activity. Thus, growers should not be able to assert the value of the commodities they raise as part of their match.

Response: The Agency disagrees with the comment and will continue to allow applicants to contribute commodity inventory as in-kind, as appropriate because the practice is not prohibited under uniform administrative requirements regarding cost-sharing.

Comment: One commenter states that the conflict of interest requirement in the proposed rule is suggestive, but bears some elaboration to prevent abuse. No owner should be able to pledge their assistance as valid "in kind" match; their compensation for their efforts on a project is the potential increased profit they expect to realize. If they are not convinced of such a return, they should not be undertaking the project.

Response: The Agency agrees that the use of grant funds for direct personal financial gain is a conflict of interest and will continue to prohibit use of grant funds to pay applicant/applicant family member salaries. However, the Agency recognizes the value of producer participation in Planning activities, as well as the necessity of participating in eligible marketing activities. Therefore, both Planning and Working Capital applicants (and applicant family members, as necessary) may contribute time spent on eligible activities as in-kind match amounting to up to 25 percent of total project cost, provided that a realistic and relevant valuation of their time can be documented, as provided for at 4284.923.

Comment: One commenter states that this section needs to be revised to connect conflict of interest issues with procurement transactions, to illustrate conflict of interest for owners and family members, and to clarify what is not an eligible use of funds.

Response: The Agency agrees and has revised rule text at §§ 4284.923 and 4284.924, and in the definition of Conflict of Interest.

Comment: One commenter states that this section should make clear that the identity of independent producers may be by name or class, but still prohibit industry-wide templates.

Response: The Agency agrees with the suggestion and has revised proposed § 4284.924(k) (now § 4284.924(m) in the interim rule) as suggested by the commenter in order to balance the interests of applicants ease of application with the Agency's need to identify applicant owners.

Pay Any Costs of the Project Incurred Prior to the Date of Grant Approval (Proposed § 4284.924(m))

Comment: One commenter states that the proposed rule restricts the use of grant and matching funds for any costs incurred prior to the date of grant approval. It would be beneficial for the applicants if they could start their project after the application is submitted. This should be changed to any cost incurred prior to the application submission. Other Agency programs such as the REAP and B&I programs, allow the start of the project prior to the award approval. This has been successful as long as the applicant is aware that they may not receive the grant. Many of the value-added products are created in a sensitive timeframe dependant on the commodity's growing season. Often the growing season is in conflict with the grant's timeframes.

Response: Prohibitions on incurring reimbursable costs prior to grant approval is standard procedure under Federal grant administrative guidelines. This protects applicants—especially small applicants of limited means—from incurring costs for a project that might not be completed if they did not receive a grant. In addition, timeframes of up to 36 months are allowed and could be tailored to accommodate growing seasons.

Comment: One commenter believes that matching funds should be allowed from the date of the NOFA because many expenses are incurred to start the project during the application period and time prior to the funding of the grants. Many of the projects are incurring legal and accounting expenses to get prepared if the VAPG is funded. If they do not incur these expenses then they are not prepared to start the projects as soon as they are awarded. If these expenses are not allowed, then the project has to stop and wait for the announcement date which can be delayed for months.

Response: Prohibitions on incurring reimbursable costs prior to grant approval is standard procedure under Federal grant administrative guidelines. This protects applicants—especially small applicants of limited means—from incurring costs for a project that might not be completed if they did not receive a grant.

Pay for Any Goods or Services Provided by a Person or Entity That Has a Conflict of Interest or an Appearance of a Conflict of Interest (Proposed § 4284.924(p))

Comment: Two commenters state that proposed § 4284.924(p) is in conflict with the provision at § 4284.923(a). The emphasis on conflict of interest or an appearance of conflict of interest is misplaced in reference to in-kind matching funds. All matching contributions must be verifiable and the time, or "sweat equity", that farmers, ranchers and/or their families invest to design and develop these value-added enterprises are necessary to their success, as the rule otherwise provides in § 4284.923(a).

One of the commenters states it would be worthwhile to delete the definition for conflict of interest entirely or redefine it with specific examples and/or exclusions. The other commenter recommends deleting the second sentence, to read as follows: (p) Pay for any goods or services provided by a person or entity that has a conflict of interest or an appearance of conflict of interest.

One commenter states he was recently notified that he received a working capital VAPG and this would have never been possible if he were not allowed to contribute in-kind match for his time to develop the business plan and feasibility study. The commenter asks USDA to please consider removing the conflict of interest clause, because, the commenter believes, it hinders small producers and businesses from applying because they cannot meet the match

requirements without being able to provide in-kind match.

Response: The Agency has revised the text at § 4284.924(a) to note the exceptions to the conflict of interest language allowing limited contributions of applicant time to in-kind match.

Funding Limitations (§ 4284.925)

Comment: One commenter suggests that the maximum grant amount remain at $300,000, not be increased to $500,000.

Response: The Agency agrees with the commenter. The statute allows a maximum of $500,000 at Agency discretion. It is the Agency's intention to retain the $300,000 maximum for working capital grants.

Comment: Four commenters recommend that the final rule include a reasonable standard to measure significant benefit to beginning farmers.

Response: The statute has a 10 percent reserve to fund projects that benefit beginning farmers or ranchers or socially disadvantaged farmers and ranchers as well as giving priority to projects that contribute to increasing opportunities for beginning farmers or ranchers. The Agency will fully implement the designations stipulated in the statute.

Comment: One commenter recommends creating a 10 percent set-aside for farmer-owned community wind projects, similar to the same for mid-tier value chain projects, or beginning farmers and ranchers.

Response: The Agency disagrees with the commenter's recommendation. Reserved funds designations are stipulated by statute.

Comment: One commenter recommends allocating the 10 percent set aside for beginning and socially disadvantaged farmers to the states along with the regular VAPG state allocations with the understanding that those funds are exclusively designated for such applicant categories. In the event a state is unable to award at least 10 percent of their state allocation to such categories, these funds should be pooled in a timely manner and made available to states with an excess of such applicants. This will ensure that 10 percent or more of the funds awarded go to these statutorily designated categories. Because these applicant types receive priority points as well, it is very unlikely RD will have trouble awarding funds at the required level.

Response: The Agency disagrees with the commenter's recommendation. Allocation of funds to States is counter to statutory direction that the VAPG program be a nationally competitive program.

Comment: One commenter states that the mid-tier value chain (MTVC) aspect of VAPG is highly specialized and the 10 percent set aside required for such projects does not lend itself well to state allocations. Thus, unlike with regular VAPG project, it makes sense to conduct a single, nationwide competition for MTVC projects.

Response: The Agency agrees that allocation of funds to States is counter to statutory direction that the VAPG program be a nationally competitive program.

Preliminary Review (§ 4284.930)

Comment: One commenter states that primary eligibility determinations are based on both applicant and project eligibility requirements. Therefore, the commenter recommends that the language in this section be revised to maintain consistency throughout the regulation.

Response: The Agency agrees with the suggested revision and has added reference to applicant eligibility in this section.

Application Package (§ 4284.931)

Comment: One commenter states that, with regard to ideal application content, a much more preferable application requirement would consist of: (1) A proposed Form RD 4284–1, VAPG Application, with all of the requisite certifications pre-printed on the form; (2) a business plan; and perhaps (3) current balance sheet (to reflect capacity to perform). A feasibility study could be included working capital applications when applicable (although it should not be required when non-emerging markets projects are proposed, as already discussed above).

Response: The Agency understands the concern for ease of the application process and will consider these points when developing application material.

Forms

Comment: One commenter notes that currently there are no forms available for the customer to complete in identifying the required criteria, and recommends using Form RD 4279–1, Application for Loan Guarantee.

One commenter states that, regarding the application form, the SF–424, Application for Federal Assistance, SF–424A, Budget Information—Non-Construction Programs, and SF–424B, Assurances—Non-Construction Programs, are generic forms poorly suited and confusing to farmers. The commenter recommends that Rural Development develop a VAPG application form specifically designed for the VAPG program.

Two commenters state that the proposed rule does not reference a single, comprehensive form for the applicant to complete in addressing the required criteria. The proposed rule should reference a standard form. The majority of items applicants must address should be basic, check-the-box certifications. Only a few, subjective items should call for a narrative statement and the form should provide adequate space for most applicants to provide the information. Many Rural Development programs can be accessed by completing a comprehensive form and the form is often referenced in the rule. The application process for the VAPG program should be driven by a standard form, similar to Form RD 4279–1.

Response: The Agency understands the concern for ease of the application process and will consider these points when developing application material.

Comment: One commenter recommends adding Form RD 1940–20.

Response: The Agency agrees with the recommendation and has added reference to Form RD 1940–20.

Comment: One commenter recommends removing Form RD 400–1 because it covers construction projects, which are ineligible for VAPG projects.

Response: The Agency agrees with the commenter and has removed Form RD 400–1 as a requirement from the rule.

Comment: One commenter states that § 4284.931(a)(6) needs to be changed to remove the need for a DUNS number for an individual and sole proprietor to be consistent with other Rural Development programs (*i.e.* REAP). The DUNS number is a number that is designed for businesses. Individuals and sole proprietors are eligible entities for the VAPG program and a DUNS number should not be required in these circumstances.

Response: The DUNS requirement for all applicants for Federal assistance is by OMB directive.

Application Content (§ 4284.931(b))

Comment: One commenter states that the 2009 VAPG rules required applicants to list their owners/members by name and the owners of all their owners/members organized as any type of legal entity other than as individuals. According to the commenter, this poses a significant problem for cooperatives, agricultural trade associations, and other applicants with multiple owners/members that might be LLCs, partnerships, corporations, etc. In many cases, the applicants did not have the required information on the owners of their owners/members on file, and found it challenging or impossible to get

it. Legal issues were also raised regarding the release of such information in certain states, even if it were available. The commenter states several potential applicants declined to apply in 2009 due to this requirement. The proposed rule is silent on the matter, which presumably means that the requirement has been dropped, and the commenter hopes this is the case.

Response: The Agency agrees and has revised the definitions of Farmer or Rancher Cooperative, Agricultural Producer Group, Independent Producers, and Majority Controlled Producer-Based Business Ventures to indicate that entities may list owner/members by name or by class.

Eligibility Discussion (§ 4284.931(b)(2))

Comment: One commenter recommends deleting "using the format prescribed by the application package," in § 4284.931(b)(2) through (4), and rewording so the regulation is not dependent upon an Agency package, but so the regulation with notifications cited comprise the format for the application.

Response: The Agency disagrees with the proposed change as its intention is to provide a comprehensive application package to convey format details. All sustentative requirements which are reflected in the application are contained in the regulation.

Comment: One commenter recommends breaking out applicant and project eligibility as § 4284.931(b)(1)(i) and (ii) respectively—they are two distinct eligibility components.

Response: The Agency agrees with the commenter and has revised the rule as suggested.

Evaluation Criteria (§ 4284.931(b)(2))

Comment: One commenter recommends that the performance evaluation criteria indicate that applicant or Agency requested performance criteria will be incorporated into applicant reporting requirements and give examples, as these elements will be detailed in the grant agreement or letter of condition.

Response: The Agency agrees with the commenter and has revised the rule as suggested. Additional instruction will be provided in the annual notice of funding availability.

Comment: One commenter recommends that the Agency indicate that the proposal evaluation criteria are applicable to both planning and working capital applicants.

Response: The Agency agrees with the commenter and has revised the rule as suggested.

Comment: One commenter recommends that the Agency clarify how applicants verify eligible matching funds, especially with regard to applicant or family member in-kind contributions that meet to be documented requirements and limitations in § 4284.923(a), or non-federal grant sources.

Response: The Agency agrees with the commenter and will provide guidance in the application package on verification of matching funds.

Comment: One commenter believes that the narrative requirement of VAPG applications is excessive and burdensome to the farmer. The commenter recommends that it be replaced by succinct sections of the recommended Form RD 4284–1, asking for what is specifically needed and no more. Farmers should not be expected to enter into a writing contest to receive VAPG assistance. Doing so turns this program into a benefit for grant-writers and not farmers.

Response: The Agency agrees with the commenter and is developing a comprehensive application package, which will provide forms and templates that encourage succinct responses.

Certification of Matching Funds (§ 4284.931(b)(3))

Comment: One commenter recommends replacing the requirement for multiple certifications on matching funds, etc., by a simple preprinted certification on a Form RD 4284–1.

Response: The Agency agrees that multiple certifications can be addressed at one place in the application.

Verification of Cost-share Matching Funds (§ 4284.931(b)(4))

Comment: One commenter states that § 4284.931(b)(4)(v) and (vi) represent a third operational provision of the proposed rule in conflict with the allowance provided in § 4284.923(a). Although the proposed rule in § 4284.923(a) states that applicant producer's time is an acceptable in-kind contribution, these two provisions each contradict that statement. Omitting mention of applicant time or other in-kind match in paragraphs (b)(4)(v) and (vi), while including a specific reference to eligible third-party contributions implies that the only kind of match that applicants can provide are in the form of cash. The commenter also states that § 4284.931(4)(vi) unnecessarily raises the specter of rejecting the in-kind contributions of producers permitted by § 4284.923(a) by cross-reference to the conflict of interest definition. The commenter recommends these paragraphs be rewritten as follows: Verification of cost-share matching. Using the format prescribed by the application package, the applicant must provide authentic documentation from the source to confirm the eligibility and availability of both cash and in-kind contributions that meet the following requirements:

(v) Matching funds must be provided in the form of confirmed applicant cash, loan, or line of credit, and may include payment for the time of the applicant/producer or the applicant producer's family members to the extent that the value of such work can be appropriately valued; or confirmed third-party cash or eligible third-party in-kind contribution.

(vi) Examples of ineligible matching funds include funds used for an ineligible purpose, contributions donated outside the proposed grant period, third-party or applicant in-kind contributions that are over-valued, expected program income at time of application or instances where the potential for a conflict of interest exists.

Response: The Agency has considered the commenter's suggested revisions and agrees that revision to these two paragraphs is needed. Therefore, the Agency has revised the elements in § 4284.931(b)(4)(v) and (vi) to be consistent with the Agency's intention to allow specified and limited applicant in-kind contributions for a portion of the project's matching funds for planning and working capital grants, and to be consistent with §§ 4284.902, 4284.923(a) and (b), and 4284.924.

Comment: One commenter states that the requirement for verification of matching funds at the time of application is burdensome and unnecessary. The farmer should not be expected to have funds on hand or committed and then tied up for months while RD reviews the applications. There is no harm done if the farmer proves ultimately unable to raise matching funds because if the farmer fails to do so, then no VAPG funds are going to be disbursed. So why require funds to be tied up so far in advance of the project's uncertain selection and start date?

Response: The Agency acknowledges the commenter's concern and will provide guidance in the instructions to the rule to balance flexibility regarding verification requirements with the need for ascertaining and documenting applicant commitment.

Comment: One commenter wants to know how conflict of interest applies to allowable applicant in-kind match for the development of business plans and/or marketing plans.

Response: The allowance of limited contributions of applicant time to both Planning and Working Capital grants is an exception to the Agency's conflict of

interest policy and is noted in revised text in §§ 4284.923 and 4284.924.

Comment: Three commenters state that the proposed rule is conflicting on the eligibility of applicant, in-kind matching funds. Nothing in this section allows for applicant in-kind matching funds. Specifically, § 4284.931(b)(4)(v) lists the eligible forms of matching funds and does not include applicant, in-kind matching funds. This is contrary to § 4284.923(a), which allows for applicant, in-kind matching funds for planning grants under qualified circumstances. The proposed rule should be clearer on the eligibility of applicant, in-kind matching funds.

One commenter states that applicant in-kind as an eligible match (for the development of business plans and/or marketing plans) is not included.

Response: The Agency agrees with the commenters concerning the conflicting nature of the proposed rule. Therefore, the Agency has revised the elements in § 4284.931(b)(4)(v) and (vi) to be consistent with the Agency's intention to allow specified and limited applicant in-kind contributions for a portion of the project's matching funds for planning and working capital grants and to be consistent with §§ 4284.902, 4284.923(a) and (b), and 4284.924.

Business Plan (§ 4284.931(b)(5))

Comment: Three commenters state that the proposed rule requires all working capital applications to include a copy of the business plan and a third-party feasibility study completed for the proposed project. The Agency is required to concur in the acceptability or adequacy of these documents. The National Office should provide guidance to allow for a standardized review process around the country. The review process must consider two competing issues. First, the process must be simple enough to allow the Agency to complete the review in a timely manner. Second, the review process must be flexible enough to accommodate business plans and feasibility studies written for ventures in a variety of different industries.

Response: The Agency agrees with the commenter and will develop guidance for State Office review of feasibility studies and business plans.

Feasibility Study (§ 4284.931(b)(6))

Comment: Two commenters state that the proposed rule requires all working capital applications to include a copy of the business plan and a third-party feasibility study completed for the proposed project. The Agency is required to concur in the acceptability or adequacy of these documents. The National Office should provide guidance to allow for a standardized review process around the country. The review process must consider two competing issues. First, the process must be simple enough to allow the Agency to complete the review in a timely manner. Second, the review process must be flexible enough to accommodate business plans and feasibility studies written for ventures in a variety of different industries.

Response: The Agency agrees with the commenter and will develop guidance for State Office review of feasibility studies and business plans.

Comment: One commenter states that a standardized review process is needed for every state. It must be simple and timely and flexible to accommodate business plans and feasibility studies written for ventures in a variety of different industries. Not everyone is making wine out of grapes.

Response: The Agency agrees with the commenter and will develop guidance for State Office review of feasibility studies and business plans.

Comment: One commenter suggests the requirement for a feasibility study be waived in the case of an individual producer who has been successfully operating for six years and beyond.

Response: The Agency has revised the rule for Independent Producer applicants proposing market expansion for existing value-added products to require only a business or marketing plan, rather than a feasibility study, provided the applicant has produced and marketed the value-added product for at least two years.

Comment: One commenter states that the issuance of a new VAPG regulation could greatly encourage the strategy of promoting local and regional foods as an important rural development by recognizing local foods as a valid value-adding strategy and thus exempting this strategy from any feasibility study requirement regardless of whether the producer has a history of participating in local foods (*i.e.,* regardless of whether the local food strategy would be an "emerging market" opportunity for a given producer). The commenter states that such a rule would greatly simplify the ability of farmers to apply for and receive VAPG assistance to begin or continue participate in farmers markets, etc.

The commenter further states that RD has consistently and unrealistically required that all applications for working capital grants be supported by a feasibility study. The value of such studies may be important in many cases, such as when a project involves an "emerging market". Their value is less clear and serves only as a barrier in instances where the VAPG project is not for an emerging market. An independent producer who has a track record of producing a value-added product should not be required to undertake the time and expense of a feasibility study when their proven history supports their business plan. The commenter states that, in such cases, feasibility studies should be optional and if completed and their content is persuasive, it could result in greater priority being assigned to such projects.

Response: The Agency generally agrees and will require only a business or marketing plan rather than a feasibility study for Independent Producer applicants requesting $50,000 or more in working capital funds and proposing market expansion for existing value-added products.

Simplified Application (§ 4284.932)

Comment: Four commenters recommend including a description of the simplified application process in the rule for two reasons. First, the simplified application process should be included in the rule, as opposed to the annual NOSA. Applicants want to prepare applications packages as early as possible to elevate the burden of a narrow timeline between program announcement and application deadline. Second, the simplified application process should be an abbreviated version of a standard form to compete for program funds. The form should be similar to Form RD 4279–1A, "Application for Loan Guarantee—Business and Industry Short Form."

Response: The Agency understands the concern for ease of the application process and will consider these points when developing application material.

Comment: Two commenters believe the Agency should create a simplified application for grants of less than $50,000. One of the commenters states that the 2008 Farm Bill explicitly calls on Rural Development to offer a simplified application for small grants of less than $50,000 as recognition that the proposal process is so cumbersome that many excellent, inexpensive projects do not get the support they deserve. The FY 2009 NOFA, however, did not offer a substantive improvement in this regard, and the proposed rule contains only a one sentence reference that says "Applicants requesting less than $50,000 will be allowed to submit a simplified application, the contents of which will be announced in an annual notice issued pursuant to § 4284.915." This issue deserves serious attention and should be dealt with in the 2010 NOFA. Given the missed opportunity

last year and the lack of any substantive proposal in the proposed rule, the commenter suggests, if necessary, that Rural Development staff work with other agencies, including AMS, FSA, and NIFA, that currently use simplified application forms in a variety of grant and loan programs, to adopt lessons learned about grants and loan documents that are user-friendly for under-resourced groups but still provide necessary assurances of merit or credit worthiness.

The other commenter adds that the simplified application process should be an abbreviated version of the full application similar to the B&I's use of Form RD 4279–1A for loans less than $600,000. For FY 09, the same application materials were required for both the simplified applicants and full applicants; however the simplified applicants did not need to submit certain information unless they were funded. So essentially the same application had to be submitted, the timeframes were just different.

Response: The Agency agrees that the Simplified Application process needs improvement and will consider the commenters' points when developing application material.

Comment: One commenter states that the proposed rule is far too vague on what is proposed for less than $50,000 grants. The commenter recommends such grant applications be limited to a Form RD 4284–1, plus a business plan of 5 or less pages, with no requirement for financial statements or feasibility study regardless of whether the project involves an emerging market.

Response: The Agency agrees the Simplified Application process requires improvement and will consider the commenter's points when developing.

Filing Instructions (§ 4284.933)

Comment: One commenter asks if, going forward, USDA will be applying a set release/due date annually. Collectively, their organizations are in favor of this. Also, could there be more than one award date annually to better facilitate the applicant's timeframe for applying for working capital and launching the business? As it now stands, the time lag between grant application, award, and implementation dissuades many potential applicants.

Response: The Agency will not set a permanent application deadline. Because the program is oversubscribed, it is not feasible to have multiple application dates.

Comment: One commenter supports the concept of a fixed annual date of application and states that March 15 is a reasonable date.

Another commenter states that RBS will need to determine whether the March 15 annual application deadline is feasible or whether the submission deadline should be specified annually with instructions added to § 4284.915.

Response: The Agency disagrees that a fixed annual application date is necessary and has revised the rule text to remove the March 15 date to provide flexibility to meet unforeseen circumstances.

Processing Applications (§ 4284.940)

Comment: One commenter states that the requirement in § 4284.940(b) requiring writing feedback to all applicants is probably either unworkable because of its burden on employees faced with processing many applications or it will be not particularly meaningful because many bland written responses will be given. The commenter recommends that USDA simply say that Rural Development employees will endeavor to provide meaningful feedback to all prospective applicants.

Response: The Agency disagrees and has retained the text at § 4284.940 requiring written notification to include reasons for ineligible or incomplete findings in order to provide useful feedback should the applicant re-apply in the future.

Proposal Evaluation Criteria and Scoring Applications (§ 4284.942)

Comment: One commenter states that the specific elements of scoring criteria are not contained in the proposed rule. Presumably this allows the Agency to allow the program to evolve to meet changing needs. The commenter also encourages the Agency to continue to incorporate strong evidence of business viability as critical components of the scoring systems.

Response: The Agency has determined that it needs to provide more specific elements in the rule text. Although this diminishes flexibility, it facilitates consistency and applicant awareness. The Agency agrees that evidence of business viability in the form of strong financial, technical and logistical support to successfully complete the project should continue to be a critical component of scoring.

Comment: One commenter recommends that the Agency revise this section to clarify that all scoring references must be readily identified information cited within the proposal itself and not to external sources of information, or it will not be considered.

Response: The Agency agrees with the recommendation and has revised the paragraph accordingly.

Comment: One commenter states that the operative provisions in the rule itself for the priority categories need to be significantly strengthened to make them actual priorities rather than minor preferences. The commenter recommends that § 4284.942 be strengthened as follows:

(b) Scoring applications. The maximum number of points that will be awarded to an applicant is 100, plus an additional 10 points if the project is located in a rural area. The criteria specified in paragraphs (b)(1) through (7) of this section will be used to score each application. The Agency will specify how points are awarded for each criterion in a Notice published each fiscal year.

(1) Nature of the proposed project (maximum 20 points).

(2) Personnel qualifications (maximum 20 points).

(3) Commitments and support (maximum 10 points).

(4) Work plan/budget (maximum 20 points).

(5) Contribution to priority beneficiaries (maximum 25 points).

(6) Administrator priority categories and points (maximum 5 points).

(7) Rural or rural area location (10 points may be awarded).

(c) Priority groups. In the event of applications equally ranked but in which one application substantially serves one or more of the priority groups and the other does not, or one serves a priority group or groups to a significantly greater degree than the other, the one that better serves the priority group shall be the higher ranked proposal.

The commenter states it is difficult to see how the intent of Congress has been met in a proposed rule that proposes to provide just 15 points out of 110 points to proposals which fulfill the statutory priority. They feel there needs to be a more substantial weighting of the ranking criteria to create a real priority.

Assuming the Agency prefers to keep the point total constant, they adjusted the numbers to give more weight to the statutory priority while not doing damage to the overall construct of the scoring system.

Also, the "type of applicant" phrase in the proposed rule's scoring system is vague and potentially very misleading. The commenter recommends that clear and unambiguous language be substituted to tie these points directly to the statutory priorities.

Language should also be added to the final rule to make clear that "priority"

means, among other things, that if applications are otherwise equally ranked but one application substantially serves one or more of the priority groups and the other does not, or one does so to a significantly greater degree than the other, the one that better serves the priority group is the higher ranked proposal.

Another commenter states that the approach proposed in § 4284.942(b) continues the past practices. The commenter proposed the following 100 point system as more likely to result in wider distribution of VAPG awards to projects that meet VAPG goals and that better rewards merit and project types that fit into the VAPG mission:

50 points. Merits of the project (awarded by independent review panels). Essentially a business plan competition, looking at each project's prospect for success and impact on revenue and market share. If the request is for working capital, 40 points maximum if no feasibility study is included (thus encouraging but not requiring a feasibility study).

10 points. If the project involves an emerging market (leaving it up to the independent review panel to determine the project is in fact legitimately new and not just an established enterprise under a different name). (thus encouraging innovative new ideas over continuation of past practices).

15 points. Smaller grant size requests. 10 points if seeking a grant of 50 percent of less than the maximum permitted by the NOSA; 15 points if seeking a grant of 25 percent or less than the maximum permitted by the NOSA. (thus encouraging many small grants, increasing the number of applicants that may be assisted)

5 points. If 50 percent or more of the commodity to which value is to be added is grown by the producer (thus encouraging this, without requiring it).

5 points. If all of the owners of the applicant entity are involved in farming (thus encouraging this, without requiring it).

5 points. If all cash match (thus encouraging a higher level of commitment, versus the softer use of "in kind" match, while discouraging projects that lack financial strength).

10 points. If Beginning/Socially Disadvantaged/or Small/Medium Family Farm (thus, honoring the statute's requirement for such priority, without overly prioritizing a category that already lays statutory claim to 10 percent of the VAPG funds). The current proposal of 15 points is excessive.

10 point penalty. If Planning Grant Applicant that received a Planning Grant within the past 3 years; If working capital Grant Applicant that received a working capital Grant within the past 3 years. (Thus discouraging repeat grantees somewhat and encouraging the distribution of VAPG awards to more, different farmers.)

Response: The Agency reviewed the various comments and has not been persuaded to make changes other than reducing the number of points for type of applicant from 15 to 10. The 5 points removed here have been inserted into nature of the proposed project. This reduction is based on the Agency's experience in the FY 2009 funding in which 65 percent of awards were made to applicants that received 15 points in one of the priority categories. It is the position of the Agency that reducing priority points from 15 to 10 will result in a better balance between applicants in priority categories and other applicants who do not qualify for priority points who also submit worthy applications.

Comment: One commenter states their grant represented a cost of $167,300 per independent producer, and they did not get any points under Section V.A.2. vii. The NOSA issued in September of 2009 states: "2 points will be awarded to applications with a project cost per owner-producer of $100,001–$200,000." A man and wife are considered two independent producers. Shouldn't we get these two points?

It is easy, in reading the grant application, to confuse the "Planning Grant Criteria" and the "Working Capital Criteria." The commenter wonders whether the reviewer confused the two in grading their grant. There is a sea of black and white in the grant application and the commenter wonders whether clever use of print types and sizes couldn't help in that department.

Response: This is an administrative item about a specific application and is not appropriately addressed in regulations comments.

Comment: One commenter recommends that additional weight be provided to applications that spread the benefits among a number of producers in the aggregate. The commenter states that, in doing so, this would ensure that the funds invested by USDA and the benefits of a future project generated through a VAPG award would be distributed to a wider number of producers, while lowering overall costs to the government.

Response: The Agency agrees with the commenter as to the benefits that may be obtained by providing additional weight to applications that spread the benefits among a number of producers in the aggregate. To do this, the Agency has revised the rule by including 10 points for cooperatives as a priority category under the Type of Applicant scoring criterion.

Comment: One commenter states that they support small farmers and would like the VAPG to allow small farmers to explore their new business ideas, to create a sustainable environment for the community. Sustainability saves the planet!

Response: The Agency agrees with the commenter and notes that small farmers are a program priority as mandated by statute.

Type of Applicant

Comment: Numerous commenters state that the Agency should ensure that the legislative priority for projects that targeted to small and mid-sized family farms and ranches and socially disadvantaged farmers and ranchers set by the 2008 Farm Bill are clearly expressed in the final rule and in the scoring/evaluation process. Congress has spoken—these are mandated VAPG priorities. Yet, the proposed rule would award only 15 ranking points out of a potential 110 ranking points for projects targeted to this group. USDA should ensure the final rule awards 25 total points for the priority group, and target small, mid-sized and socially disadvantaged farmers and ranchers should take priority over projects that are not targeted in that fashion if proposals are otherwise equally ranked.

Response: The Agency disagrees with the suggestion to increase the points for this criterion to 25. It is the position of the Agency that reducing priority points from 15 to 10 will result in a better balance among applicants in priority categories and other applicants who do not qualify for priority points who also submit worthy applications.

Comment: One commenter states that the program should target small, mid-sized and socially disadvantaged farmers as defined by the 2008 Farm Bill and award extra points to these targeted groups.

Response: The Agency notes that the program does target these farmers with the reserved funding and priority points.

Comment: One commenter recommends awarding all the points for the priority group defined in the 2008 Farm Bill and adding clear language that states proposals targeting small, mid-sized and socially disadvantaged farmers and ranchers should take priority over projects that are not targeted in that fashion if proposals are otherwise equally ranked.

Response: The statute targets the specific categories mentioned by the commenter, as well and Beginning

Farmers and Ranchers and requires that they receive priority in the form of reserved funding and additional points.

Comment: One commenter states that the evaluation and scoring should be changed to better reflect Congressional intent in establishing priority beneficiaries for the program. The commenter believes the 15 points for beginning farmers and ranchers, socially disadvantaged farmers and ranchers and small and mid-size family farmers and ranchers should be increased to at least 25 points for projects that propose to provide contributions and opportunities for farmers and ranchers meeting these definitions.

One commenter encourages USDA not to increase the number of points for New and Beginning Farmers beyond the current 15. The commenter states that the VAPG program should continue to benefit a wide range of producers. While recent actions to set aside program funds for New and Beginning Farmers and Ranchers is appropriate, the substantial majority of funds should be awarded based on projected viability of the business, and be accessible to a wide number of active farmers. The commenter states that, for those individuals/families that are just getting into agriculture, it is a terribly challenging task to capitalize and "get good" at agricultural production AND to participate in the creation/launch of a value-added enterprise. To this extent, New and Beginning Farmers should be given modest special support through the VAPG program, but USDA should not transform this program into a special form of subsidy for this group of producers at the expense of other eligible categories of farmers. Awarding 15 points for New and Beginning Farmers is an appropriate way of supporting these ventures.

Response: It is the position of the Agency that reducing priority points from 15 to 10 will result in a better balance between applicants in priority categories and other applicants who do not qualify for priority points who also submit worthy applications.

Rural or Rural Area

Comment: Numerous commenters raised concern on this proposed scoring criterion. These concerns are presented below.

One commenter states that the proposed rule adds a new priority that awards 10 points to projects that are "rural". This is confusing because almost by definition all commodities start out as rural and are then tailored to an urban consumer. How a project's "rural" character is assessed is highly unclear and confusing. The commenter states that this new priority is not necessary and it is not part of the statutory logic behind the program, which is to support agricultural producers, with no regard to the geographic or urban/rural location.

Two commenters state that the standards are vague as to how the "projects located in a rural area" language would be applied and the reasoning given for the additional weight. The additional classification of "rural" provides cooperatives with packinghouses or other facilities in an urban area at a competitive disadvantage for grant funds. Although the beneficiary of a project is the farmer and most likely located in a rural area, many activities such as processing, packaging and marketing of products do not take place in rural areas. Many cooperatives have infrastructure located closer to urban markets. The commenters believe this language conflicts with the goal of providing additional benefits to rural producers, especially in the state of California.

One of the commenters states that, depending on the definition of "rural area," proposals from states such as California could be precluded from the points entirely and put at a disadvantage nationally. The commenter states that using the proposed scoring criteria would cause additional confusion while being irrelevant to the goal of increasing producer income, which ultimately supports those rural areas. The commenter encourages USDA to adjust the proposed scoring criteria, keeping these concerns in mind.

Another commenter states that the definition of projects that "will take place in rural places" is vague. The commenter supports the idea that entities that are headquartered and based in rural communities should get increased points compared to those that are headquartered in urban centers. However, the commenter does not support the idea that all tasks (*i.e.* advertising, promotions, contract manufacturing, etc) must also be located in rural places in order to qualify for the additional 10 points.

One commenter states that the proposed rule § 4284.942 grants 10 additional scoring points (above the 100 ordinarily possible) to "projects located in a rural area," generally defined as areas with less than 50,000 in population. This could pose many applicants problems—including those located in rural areas.

The VAPG is a marketing grant. Marketing projects are often performed in areas with large populations because that is where the people are. This rule would apparently penalize projects that involve market launches, promotions, and advertizing campaigns conducted in areas with the highest concentration of customers. A similar question arises when a planning project involves contracting with advertising venues, specialists, or consultants located in urban areas, which would presumably conduct much of their work in their hometowns.

Many cooperatives, agricultural trade associations, and other applicants are headquartered in locations that exceed 50,000 in population, however the growers that actually benefit are by-and-large rural. The new rule would seem to penalize an applicant conducting a project in its headquarters city even though the benefits would flow to rural areas. This scoring bias seems contrary to the VAPG's stated purpose of increasing income to growers.

One commenter states that the proposed rule grants 10 additional scoring points (above the 100 ordinarily possible) to "projects located in a rural area," generally defined as areas with less than 50,000 in population. The meaning of this is clearly not defined and ultimately may run counter to the program's intent. Although the beneficiary of a project is ultimately the rural producer, many activities such as processing, packaging, marketing of products does not take place in "rural" areas; nor are cooperatives necessarily headquartered in "rural" areas while their profits are channeled back to those areas. Using this as scoring criteria does not seem relevant to the goal of increasing producer income, which ultimately supports those rural areas.

One commenter hopes there will not be restrictions placed on their ability to receive grant support if their marketing activities take place in metropolitan areas. The commenter states that, while they often do market in rural communities, including the one in which they live and work, the majority of the customers of their producers are in major markets, like New York, Southern California, Texas, Chicago, and Florida.

Response: The Agency agrees with the concerns raised by the commenters. Further, the statute does not include a rural area requirement for this program. Therefore, the Agency has removed this provision from the rule.

Grant Agreement (§ 4284.951)

Comment: One commenter states that the title of this section should be changed to, "Obligate and Award Funds." The commenter suggested reworking the sections as follows:

(a) Letter of conditions (must include 90 day provision for grantee to meet LOC conditions (remove from (b) GA section)).

(b) Grant agreement and conditions.

(c) Other documentation, (should document the various other forms the grantee will execute in connection with the grant).

(d) Grant disbursements (must clarify the process for disbursing funds, including SF 270, Request for Advancement or Reimbursement, and supporting documentation expectations).

The commenter states that these changes provide the applicant/grantee with a more comprehensive understanding of the process and requirements associated with the award.

Response: The Agency agrees with the commenter's suggestion and has revised the rule accordingly.

Monitoring and Reporting Program Performance (§ 4284.960)

Comment: One commenter states that the Agency should clarify that the project must be completed per terms and conditions specified in the approved work plan and budget, grant agreement and Letter of Conditions. The commenter states that this brings the work plan and budget concept back to project performance as the performance benchmark for all eligible activities.

Response: The Agency agrees with the suggested revision and has revised the paragraph accordingly.

Comment: In referring to § 4284.960(b)(4), one commenter states that the Agency should provide examples of what additional project and/or performance data might be requested by the Agency to meet 2008 Farm Bill categories and expectations, such as jobs created, increased revenues, renewable energy capacity or emissions reductions, results of supply chain arrangements, BFR or SDFR. The commenter states that this is a heads up on the grant agreement requirements.

Response: The Agency agrees with the suggested revision and has revised the paragraph as suggested by the commenter.

Comment: One commenter suggests adding a new paragraph to § 4284.960(b) that states that, as part of the monitoring process, RBS may terminate or suspend the grant for lack of adequate or timely progress, reporting, or documentation, or for failure to comply with Agency requirements.

Response: The Agency agrees with the suggested revision and has added a new paragraph (see § 4284.960(b)(5)) as suggested by the commenter.

Transfer of Obligations (§ 4284.962)

Comment: One commenter recommends revising this section to indicate that any transfer of obligation is at the discretion of the Agency and determined on a case-by-case basis. The commenter also recommends augmenting the language relating to requirements for the substituted applicant so that all eligibility requirements are spelled out, including maintaining the applicant type of the original applicant, and maintaining the identity and number of independent producers originally committed to the project for both general and reserved funds. The commenter also suggests that the Agency emphasize that the project must continue to meet all Product, Purpose, Branding, and Reserved Funds eligibility requirements. The commenter states that, for anything less than this, it would be better to return the funds to the program for use by another competitive grantee that has endured the process and eligibility analysis.

Response: The Agency agrees with the suggested revisions and has revised the rule as suggested by the commenter except for the suggested text regarding maintaining applicant type, maintaining the identity and number of independent producers originally committed to the project, because this would unnecessarily limit the Agency's flexibility.

Grant Close Out and Related Activities (§ 4284.963)

Comment: One commenter recommends revising this section to indicate actual closeout practices. Grant closeout is not usually about suspension or termination of a grant prematurely, and that message will be provided to the grantee in § 4284.960(b)(5). Closeout is usually about administrative wrap-up post the completion of the grant project or funding period. The commenter states that typical closeout activities include a Letter to Grantee with final closeout instructions and reminders for amounts de-obligated for any unexpended grant funds, final project performance reports due, submission of necessary deliverables, audit requirements, any outstanding items of closure.

Response: The Agency agrees with the commenter and has revised the rule § 4284.963 and added additional text describing grant closeout activities.

Preamble

Comment: One commenter states that the final rule should give proper acknowledgement of the statutory VAPG priorities by strengthening the grant evaluation criteria and scoring section. The 2008 Farm Bill amended the VAPG program in several important ways, including identifying priority groups for funding and establishing two program reserved funds. The commenter believes that these program modifications are significant and should be addressed in the preamble to the rule in the Summary section and in the Supplemental Information section. Most importantly, the proposal evaluation criteria and scoring applications section (§ 4284.942) needs to be strengthened to make the statutory priorities actual programmatic priorities.

The statutory priorities and set-asides are clearly intended to ensure that these producer groups and this type of rural development marketing model are more likely to be supported with VAPG grant funds. Because the language changes in the 2008 Farm Bill fundamentally address the character of the VAPG grant program Congress intended to create, the commenter believes that they should be clearly referenced in the discussion of the rule. They find the omission of such a discussion in the preamble to the proposed rule to be quite glaring.

Response: The Agency agrees that discussion of 2008 Farm Bill priorities should be included in the preamble. However, the Agency's experience in implementing the reserved funding and priority scoring in 2009 highlighted the need to balance statutory priorities with fairness to other applicants who also submitted worthy applications.

Preamble—Summary

Comment: One commenter suggests adding the following language to the Summary section when issuing the final rule:

The program provides a priority for funding for projects that contribute to opportunities for beginning farmers or ranchers, socially disadvantaged farmers or ranchers, and operators of small- and medium-sized family farms and ranches. Further, it creates two reserved funds each of which will include 10 percent of program funds each year to support applications that support opportunities for beginning and socially disadvantaged farmers and ranchers and for proposed projects that develop mid-tier value marketing chains.

Response: The Agency agrees and has added the suggested text to the Preamble Summary.

Preamble—Supplementary Information

Comment: One commenter suggests the addition of the following language to the **SUPPLEMENTARY INFORMATION** section:

SUPPLEMENTARY INFORMATION:

I. Background

B. Nature of the Program

This subpart contains the provisions and procedures by which the Agency will administer the Value-Added Producer Grant (VAPG) Program. The primary objective of this grant program is to help Independent Producers of Agricultural Commodities, Agriculture Producer Groups, Farmer and Rancher Cooperatives, and Majority-Controlled Producer-Based Business Ventures develop strategies to create marketing opportunities and to help develop Business Plans for viable marketing opportunities regarding production of bio-based products from agricultural commodities. As with all value-added efforts, generating new products, creating expanded marketing opportunities, and increasing producer income are the end goal.

Eligible applicants are independent agricultural producers, farm and rancher cooperatives, agricultural producers groups, and majority-controlled producer-based business ventures.

Added text: "The program includes priorities for projects that contribute to opportunities for beginning farmers or ranchers, socially disadvantaged farmers or ranchers, and operators of small- and medium-sized family farms and ranches. Applications from these priority groups will receive additional points in the scoring of applications. In the case of equally ranked proposals, preference will be given to applications that more significantly contribute to opportunities for beginning farmers and ranchers, socially disadvantaged farmers and ranchers, and operators of small- and medium-sized family farms and ranches.

Further, the program includes two reserved funds each of which will include ten percent of program funds each year to support applications that support projects that benefit beginning and socially disadvantaged farmers and ranchers and that develop mid-tier value marketing chains."

Response: The Agency agrees and has added the suggested text to the description of the program.

General

Comment: One commenter states that the widespread opinion of the VAPG program is that it is a "grant program with barriers." The commenter states that, during Rural Development-sponsored jobs forums in Oregon in January 2010 and in many other settings, this analysis has been repeated by a number of producers who cited VAPG's complex rules poorly suited to modern agricultural realities, its difficult narrative application content, and its lengthy application process. The commenter states that the proposed rule does little more than institutionalize the design and delivery of the VAPG program that Rural Development has used in past NOSA's. The commenter recommends that it would be better to leave the existing RD Instructions 4284–A and 4284–J in place with the few changes required by the 2008 Farm Bill than to go forward with this proposed rule.

The commenter also encourages Rural Development's leadership to take a step back from this proposed rule and instead engage the agricultural community in a series of listening sessions with VAPG constitutes to find a more sensitive program design. While this will delay the implementation of a new rule and may temporarily delay VAPG program delivery, it will ultimately result in a program that is far more effective and efficient in meeting the needs for which it was designed.

Response: The Agency acknowledges the commenter's concerns and welcomes feedback and suggestions from the agricultural community. The Agency is attempting to address these concerns within the context of the proposed rule.

General—Program Design

Comment: One commenter recommends full utilization of Rural Development's core strength—the field office structure. The commenter states that delivery of VAPG should be accomplished by allocating all or nearly all VAPG funds to the state level for delivery via local competitions conducted by local experts most familiar with local conditions and local opportunities. This will assure a nationwide geographic distribution of VAPG funds, and it will defuse the current high hurdle presented to local producers who are asked to submit projects for review and selection/non-selection by remote national players. The commenter states that despite noble efforts by national Rural Development staff, the VAPG program has been repeatedly delayed and interrupted in its delivery, with extremely short NOSA application windows followed by long months of waiting for award selections and announcements. This is inevitable when the staffing strengths of state offices are bypassed and work must pass through the inevitable bottleneck of a small national office staff no matter how motivated.

The commenter also states VAPG selection process should be redesigned as a straightforward business plan competition on a state by state basis. Every state would receive an allocation, similar to the approach currently used with the Rural Business Enterprise Grant program. Every state would conduct a competition overseen by its own independent review panel constituted as currently outlined in RD Instruction 4284–J, § 4284.912(a). In creating these panels, states could even be encouraged to allow applicants to present their business plans and answer questions, so that the heavy burden of grant writing could be further reduced and program accessibility increased.

The commenter states that, in making awards, RD state offices should be given the authority to reduce award sizes to assure an efficient use of their state allocation. The current process of making awards on an all or nothing basis is an inefficient use of scarce federal grant dollars.

Response: The Agency acknowledges the commenter's concerns and is continuing to work to streamline the program and support field staff that implement the program. However, the Agency does not have the authority to institute state allocations.

List of Subjects in 7 CFR Part 4284

Agricultural commodities, Grant programs, Housing and community development, Rural areas, Rural development, Value-added activities.

For the reasons set forth in the preamble, Chapter XLII of title 7 of the Code of Federal Regulations is amended as follows:

PART 4284—GRANTS

■ 1. The authority citation for part 4284 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

■ 2. Part 4284 is amended by revising subpart J to read as follows:

Subpart J—Value-Added Producer Grant Program

Sec. General
4284.901 Purpose.
4284.902 Definitions.
4284.903 Review or appeal rights.
4284.904 Exception authority.
4284.905 Nondiscrimination and compliance with other Federal laws.
4284.906 State laws, local laws, regulatory commission regulations.
4284.907 Environmental requirements.
4284.908 Compliance with other regulations.
4284.909 Forms, regulations, and instructions.
4284.910–4284.914 [Reserved]

Funding and Programmatic Change Notifications

4284.915 Notifications.
4284.916–4284.919 [Reserved]

General

§ 4284.901 Purpose.

This subpart implements the value-added agricultural product market development grant program (Value-Added Producer Grants (VAPG)) administered by the Rural Business-Cooperative Service whereby grants are made to enable viable agricultural producers (those who are prepared to progress to the next business level of planning for, or engaging in, value-added production) to develop businesses that produce and market value-added agricultural products. The provisions of this subpart constitute the entire provisions applicable to this Program; the provisions of subpart A of this part do not apply to this subpart.

§ 4284.902 Definitions.

The following definitions apply to this subpart:

Administrator. The Administrator of the Rural Business-Cooperative Service or designees or successors.

Agency. The Rural Business-Cooperative Service or successor for the programs it administers.

Agricultural commodity. An unprocessed product of farms, ranches, nurseries, and forests and natural and man-made bodies of water, that the independent producer has cultivated, raised, or harvested with legal access rights. Agricultural commodities include plant and animal products and their by-products, such as crops, forestry products, hydroponics, nursery stock, aquaculture, meat, on-farm generated manure, and fish and seafood products. Agricultural commodities do not include horses or other animals raised or sold as pets, such as cats, dogs, and ferrets.

Agricultural food product. Agricultural food products can be a raw, cooked, or processed edible substance, beverage, or ingredient intended for human consumption. These products cannot be animal feed, live animals, non-harvested plants, fiber, medicinal products, cosmetics, tobacco products, or narcotics.

Agricultural producer. An individual or entity directly engaged in the production of an agricultural commodity, or that has the legal right to harvest an agricultural commodity, that is the subject of the value-added project. Agricultural producers may "directly engage" either through substantially participating in the labor, management, and field operations themselves or by maintaining ownership and financial control of the agricultural operation.

Agricultural producer group. A membership organization that represents independent producers and whose mission includes working on behalf of independent producers and the majority of whose membership and board of directors is comprised of independent producers. The independent producers, on whose behalf the value-added work will be done, must be confirmed as eligible and identified by name or class.

Applicant. The legal entity submitting an application to participate in the competition for program funding. The applicant must be legally structured to meet one of the four eligible applicant types: Independent Producer, Agricultural Producer Group, Farmer or Rancher Cooperative, or Majority-Controlled Producer Based Business.

Beginning farmer or rancher. This term has the meaning given it in section 343(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)) and is an entity in which none of the individual owners have operated a farm or a ranch for more than 10 years. For the purposes of this subpart, a beginning farmer or rancher must be an Independent Producer that, at the time of application submission, currently owns and produces more than 50 percent of the agricultural commodity to which value will be added and has an applicant ownership or membership of 51 percent or more beginning farmers or ranchers. Except as provided, for the purposes of § 4284.922(c)(1)(i), to compete for reserved funds, for applicant entities with multiple owners, all owners must be eligible beginning farmers or ranchers.

Branding. The activities involved in the practice of creating a name, symbol or design that identifies and differentiates a product from other products that attracts and retains customers or encourages confidence in the quality and performance of that individual or firm's products or services.

Business plan. A formal statement of a set of business goals, the reasons why they are believed attainable, and the plan for reaching those goals, including pro forma financial statements appropriate to the term and scope of the project and sufficient to evidence the viability of the venture. It may also contain background information about the organization or team attempting to reach those goals.

Change in physical state. An irreversible processing activity that alters the raw agricultural commodity into a marketable value-added product. This processing activity must be something other than a post-harvest process that primarily acts to preserve the commodity for later sale. Examples of eligible value-added products in this category include, but are not limited to, fish fillets, diced tomatoes, bio-diesel fuel, cheese, jam, and wool rugs. Examples of ineligible products include, but are not limited to, pressure-ripened produce, raw bottled milk, container grown trees, plugs, and cut flowers.

Conflict of interest. A situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially. Regarding use of both grant and matching funds, Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, or their immediate family members having a financial or other interest in the outcome of the project; or that restrict open and free competition for unrestrained trade. Specifically, grant and matching funds may not be used to support costs for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest, including, but not limited to, owner(s) and their immediate family members. See § 4284.923(a) and (b) for limited exceptions to this definition and practice for VAPG.

Departmental regulations. The regulations of the Department of

Agriculture's Office of Chief Financial Officer (or successor office) as codified in 7 CFR parts 3000 through 3099, including, but not necessarily limited to, 7 CFR parts 3015 through 3019, 7 CFR part 3021, and 7 CFR part 3052, and successor regulations to these parts.

Emerging market. A new or developing, geographic or demographic market that is new to the applicant or the applicant's product. To qualify as new, the applicant cannot have supplied this product, geographic, or demographic market for more than two years at time of application submission.

Family farm. The term has the meaning given it in § 761.2 of title 7, Code of Federal Regulations as in effect on November 8, 2007 (*see* 7 CFR parts 700–799, revised as of January 1, 2007), in effect that, a Family Farm produces agricultural commodities for sale in sufficient quantity to be recognized as a farm and not a rural residence, owners are primarily responsible for daily physical labor and management, hired help only supplements family labor, and owners are related by blood or marriage or are immediate family.

Farm or ranch. Any place from which $1,000 or more of agricultural products were raised and sold or would have been raised and sold during the previous year, but for an event beyond the control of the farmer or rancher.

Farm- or Ranch-based renewable energy. An agricultural commodity that is used to generate renewable energy on a farm or ranch owned or leased by the independent producer applicant that produces the agricultural commodity. On-farm generation of energy from wind, solar, geothermal or hydro sources are not eligible.

Farmer or rancher cooperative. A business owned and controlled by independent producers that is incorporated, or otherwise identified by the state in which it operates, as a cooperatively operated business. The independent producers, on whose behalf the value-added work will be done, must be confirmed as eligible and identified by name or class.

Feasibility study. An analysis by a qualified consultant of the economic, market, technical, financial, and management capabilities of a proposed project or business in terms of the project's expectation for success.

Financial feasibility. The ability of a project or business to achieve the income, credit, and cash flows to financially sustain a venture over the long term.

Fiscal year. The Federal government's fiscal year.

Immediate family. Individuals who are closely related by blood, marriage, or adoption, or live within the same household, such as a spouse, domestic partner, parent, child, brother, sister, aunt, uncle, grandparent, grandchild, niece, or nephew.

Independent producers.

(1) Individual agricultural producers or entities that are solely owned and controlled by agricultural producers. Independent producers must produce and own the majority of the agricultural commodity to which value will be added as the subject of the project proposal. Independent producers must maintain ownership of the agricultural commodity or product from its raw state through the production and marketing of the value-added product. Producers who produce the agricultural commodity under contract for another entity, but do not own the agricultural commodity or value-added product produced are not considered independent producers. Entities that contract out the production of an agricultural commodity are not considered independent producers. Independent producer entities must confirm their owner members as eligible and must identify them by name or class.

(2) A steering committee comprised of specifically identified agricultural producers in the process of organizing one of the four program eligible entity types that will operate a value-added venture and will supply the majority of the agricultural commodity for the value-added project during the grant period. Such entity must be legally authorized before the grant agreement will be approved by the Agency.

(3) A harvester of an agricultural commodity that can document their legal right to access and harvest the majority of the agricultural commodity that will be used for the value-added product.

Local or regional supply network. An interconnected group of entities through which agricultural based products move from production through consumption in a local or regional area of the United States. Examples of participants in a supply network may include agricultural producers, aggregators, processors, distributors, wholesalers, retailers, consumers, and entities that organize or provide facilitation services and technical assistance for development of such networks.

Locally-produced agricultural food product. Any agricultural food product, as defined in this subpart, that is raised, produced, and distributed in:

(1) The locality or region in which the final product is marketed, so that the total distance that the product is transported is less than 400 miles from the origin of the product; or

(2) The State in which the product is produced.

Majority-controlled producer-based business venture. An entity (except farmer or rancher cooperatives) in which more than 50 percent of the financial ownership and voting control is held by independent producers. Independent Producer members must be confirmed as eligible and must be identified by name or class, along with their percentage of ownership.

Marketing plan. A plan for the project conducted by a qualified consultant that identifies a market window, potential buyers, a description of the distribution system and possible promotional campaigns.

Matching funds. A cost-sharing contribution to the project via confirmed cash or funding commitments from eligible sources without a real or apparent conflict of interest, that are used for eligible project purposes during the grant funding period. Matching funds must be at least equal to the grant amount, and combined grant and matching funds must equal 100 percent of the total project costs. All matching funds must be verified by authentic documentation from the source as part of the application. Matching funds must be provided in the form of confirmed applicant cash, loan, or line of credit, or provided in the form of a confirmed applicant or family member in-kind contribution that meets the requirements and limitations in § 4284.923(a) and (b); or confirmed third-party cash or eligible third-party in-kind contribution; or confirmed non-federal grant sources (unless otherwise provided by law). See examples of ineligible matching funds and matching funds verification requirements in §§ 4284.924 and 4284.931.

Medium-sized farm. A farm or ranch that is structured as a family farm that has averaged $250,001 to $1,000,000 in annual gross sales of agricultural commodities in the previous three years.

Mid-tier value chain. Local and regional supply networks that link independent producers with businesses and cooperatives that market value-added agricultural products in a manner that:

(1) Targets and strengthens the profitability and competitiveness of small and medium-sized farms and ranches that are structured as a family farm; and

(2) Obtains agreement from an eligible agricultural producer group, farmer or rancher cooperative, or majority-

controlled producer-based business venture that is engaged in the value chain on a marketing strategy.

(3) For mid-tier value chain projects, the Agency recognizes that, in a supply chain network, a variety of raw agricultural commodity and value-added product ownership and transfer arrangements may be necessary. Consequently, applicant ownership of the raw agricultural commodity and value-added product from raw through value-added is not necessarily required, as long as the mid-tier value chain proposal can demonstrate an increase in customer base and an increase in revenue returns to the applicant producers supplying the majority of the raw agricultural commodity for the project.

Planning grant. A grant to facilitate the development of a defined program of economic planning activities to determine the viability of a potential value-added venture, and specifically for the purpose of paying for a qualified consultant to conduct and develop a feasibility study, business plan, and/or marketing plan associated with the processing and/or marketing of a value-added agricultural product.

Produced in a manner that enhances the value of the agricultural commodity. The use of a recognizably coherent set of agricultural production practices in the growing or raising of the raw commodity, such that a differentiated market identity is created for the resulting product. Examples of eligible products in this category include, but are not limited to, sustainably grown apples, eggs produced from free-range chickens, or organically grown carrots.

Product segregation. Separating an agricultural commodity or product on the same farm from other varieties of the same commodity or product on the same farm during production and harvesting, with assurance of continued separation from similar commodities during processing and marketing in a manner that results in the enhancement of the value of the separated commodity or product.

Pro forma financial statement. A financial statement that projects the future financial position of a company. The statement is part of the business plan and includes an explanation of all assumptions, such as input prices, finished product prices, and other economic factors used to generate the financial statements. The statement must include projections for a minimum of three years in the form of cash flow statements, income statements, and balance sheets.

Project. All of the eligible activities to be funded by grant and matching funds.

Qualified consultant. An independent, third-party, without a conflict of interest, possessing the knowledge, expertise, and experience to perform the specific task required in an efficient, effective, and authoritative manner.

Rural Development. A mission area of the Under Secretary for Rural Development within the U.S. Department of Agriculture (USDA), which includes Rural Housing Service, Rural Utilities Service, and Rural Business-Cooperative Service and their successors.

Small farm. A farm or ranch that is structured as a Family Farm that has averaged $250,000 or less in annual gross sales of agricultural products in the previous three years.

Socially disadvantaged farmer or rancher. This term has the meaning given it in section 355(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2003(e)): A farmer or rancher who is a member of a "socially disadvantaged group." In this definition, the term farmer or rancher means a person that is engaged in farming or ranching or an entity solely owned by individuals who are engaged in farming or ranching. A socially disadvantaged group means a group whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. In the event that there are multiple farmer or rancher owners of the applicant organization, the Agency requires that at least 51 percent of the ownership be held by members of a socially disadvantaged group. Except as provided, for the purposes of § 4284.922(c)(1)(ii), to compete for reserved funds, all farmer and rancher owners must be members of a socially disadvantaged group.

State. Any of the 50 States of the United States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

State director. The term "State Director" means, with respect to a State, the Director of the Rural Development State Office.

State office. USDA Rural Development offices located in each state.

Total project cost. The sum of all grant and matching funds in the project budget that reflects the eligible project tasks associated with the work plan.

Value-added agricultural product. Any agricultural commodity that meets the requirements specified in paragraphs (1) and (2) of this definition.

(1) The agricultural commodity must meet one of the following five value-added methodologies:

(i) Has undergone a change in physical state;

(ii) Was produced in a manner that enhances the value of the agricultural commodity;

(iii) Is physically segregated in a manner that results in the enhancement of the value of the agricultural commodity;

(iv) Is a source of farm- or ranch-based renewable energy, including E–85 fuel; or

(v) Is aggregated and marketed as a locally-produced agricultural food product.

(2) As a result of the change in physical state or the manner in which the agricultural commodity was produced, marketed, or segregated:

(i) The customer base for the agricultural commodity is expanded and

(ii) A greater portion of the revenue derived from the marketing, processing, or physical segregation of the agricultural commodity is available to the producer of the commodity.

Venture. The business and its value-added undertakings, including the project and other related activities.

Working capital grant. A grant to provide funds to operate a value-added project, specifically to pay the eligible project expenses related to the processing and/or marketing of the value-added product that are eligible uses of grant funds.

§ 4284.903 Review or appeal rights.

A person may seek a review of an Agency decision under this subpart from the appropriate Agency official that oversees the program in question or appeal to the National Appeals Division in accordance with 7 CFR Part 11.

§ 4284.904 Exception authority.

Except as specified in paragraphs (a) and (b) of this section, the Administrator may make exceptions to any requirement or provision of this subpart, if such exception is necessary to implement the intent of the authorizing statute in a time of national emergency or in accordance with a Presidentially-declared disaster, or, on a case-by-case basis, when such an exception is in the best financial interests of the Federal Government and is otherwise not in conflict with applicable laws.

(a) *Applicant eligibility.* No exception to applicant eligibility can be made.

(b) *Project eligibility.* No exception to project eligibility can be made.

§ 4284.905 Nondiscrimination and compliance with other Federal laws.

(a) *Other Federal laws.* Applicants must comply with other applicable Federal laws, including the Equal Employment Opportunities Act of 1972, the Americans with Disabilities Act, the Equal Credit Opportunity Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and 7 CFR part 1901, subpart E.

(b) *Nondiscrimination.* The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). Any applicant that believes it has been discriminated against as a result of applying for funds under this program should contact: USDA, Director, Office of Adjudication and Compliance, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice) or (202) 720–6382 (TDD) for information and instructions regarding the filing of a Civil Rights complaint. USDA is an equal opportunity provider, employer, and lender.

(c) *Civil rights compliance.* Recipients of grants must comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973. This includes collection and maintenance of data on the basis of race, sex and national origin of the recipient's membership/ownership and employees. These data must be available to conduct compliance reviews in accordance with 7 CFR Part 1901, subpart E. For grants, initial compliance review will be conducted after Form RD 400–4, "Assurance Agreement," is signed and one subsequent compliance review after the last disbursement of grant funds have been made, and the facility or programs has been in full operations for 90 days.

(d) *Executive Order 12898.* When a project is proposed and financial assistance is requested, the Agency will conduct a Civil Rights Impact Analysis (CRIA) with regards to environmental justice. The CRIA must be conducted and the analysis documented utilizing Form RD 2006–38, "Environmental Justice (EJ) and Civil Rights Impact Analysis (CRIA) Certification." This certification must be done prior to grant approval, obligation of funds, or other commitments of Agency resources, including issuance of a Letter of Conditions, whichever occurs first.

§ 4284.906 State laws, local laws, regulatory commission regulations.

If there are conflicts between this subpart and State or local laws or regulatory commission regulations, the provisions of this subpart will control.

§ 4284.907 Environmental requirements.

All grants awarded under this subpart are subject to the environmental requirements in subpart G of 7 CFR part 1940 or successor regulations. Applications for planning grants are generally excluded from the environmental review process by § 1940.333 of this title. Applicants for working capital grants must submit Form RD 1940–20, "Request for Environmental Information."

§ 4284.908 Compliance with other regulations.

(a) *Departmental regulations.* Applicants must comply with the regulations of the Department of Agriculture's Office of Chief Financial Officer (or successor office) as codified in 7 CFR parts 3000 through 3099, including, but not necessarily limited to, 7 CFR parts 3015 through 3019, 7 CFR part 3021, and 7 CFR part 3052, and successor regulations to these parts.

(b) *Cost principles.* Applicants must comply with the cost principles found in 2 CFR part 230 and in 48 CFR part 31.2.

(c) *Definitions.* If a term is defined differently in the Departmental Regulations, 2 CFR part 230, or 48 CFR 31.2 and in this subpart, such term shall have the meaning as found in this subpart.

§ 4284.909 Forms, regulations, and instructions.

Copies of all forms, regulations, instructions, and other materials related to the program referenced in this subpart may be obtained through the Agency.

§§ 4284.910–4284.914 [Reserved]

Funding and Programmatic Change Notifications

§ 4284.915 Notifications.

In implementing this subpart, the Agency will issue notifications addressing funding and programmatic changes, as specified in paragraphs (a) and (b) of this section, respectively. The methods that the Agency will use in making these notifications is specified in paragraph (c) of this section, and the timing of these notifications is specified in paragraph (d) of this section.

(a) *Funding and simplified applications.* The Agency will issue notifications concerning:

(1) The funding level and the minimum and maximum grant amount and any additional funding information as determined by the Agency; and

(2) The contents of simplified applications, as provided for in § 4284.932.

(b) *Programmatic changes.* The Agency will issue notifications of the programmatic changes specified in paragraphs (b)(1) through (4) of this section.

(1) The following is the set of Administrator priority categories that may be considered if the provisions specified in § 4284.942(b)(6) are not to be used for awarding Administrator points:

(i) Unserved or underserved areas.

(ii) Geographic diversity.

(iii) Emergency conditions.

(iv) Priority mission area plans, goals, and objectives.

(2) Additional reports that are generally applicable across projects within a program associated with the monitoring of and reporting on project performance.

(3) Any requirement specified in § 4284.933.

(4) Preliminary review information.

(c) *Notification methods.* The Agency will issue the information specified in paragraphs (a) and (b) of this section in one or more **Federal Register** notices. In addition, all information will be available at any Rural Development office.

(d) *Timing.* The Agency will make the information specified in paragraphs (a) and (b) of this section available as specified in paragraphs (d)(1) through (3) of this section.

(1) The Agency will make the information specified in paragraph (a) of this section available each fiscal year.

(2) The Agency will make the information specified in paragraph (b)(1) of this section available at least 60 days prior to the application deadline, as applicable.

(3) The Agency will make the information specified in paragraphs (b)(2) through (4) of this section available on an as needed basis.

§§ 4284.916–4284.919 [Reserved]

Eligibility

§ 4284.920 Applicant eligibility.

To be eligible for a grant under this subpart, an applicant must demonstrate

that they meet the requirements specified in paragraphs (a) through (d) of this section, as applicable, and are subject to the limitations specified in paragraphs (e) and (f) of this section.

(a) *Type of applicant.* The applicant must demonstrate that they meet all definition requirements for one of the following applicant types:

(1) An independent producer;

(2) An agricultural producer group;

(3) A farmer or rancher cooperative; or

(4) A majority-controlled producer-based business venture.

(b) *Emerging market.* An applicant that is an agricultural producer group, a farmer or rancher cooperative, or a majority-controlled producer-based business venture must demonstrate that they are entering into an emerging market as a result of the proposed project.

(c) *Citizenship.*

(1) Individual applicants must certify that they:

(i) Are citizens or nationals of the United States (U.S.), the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, or American Samoa, or

(ii) Reside in the U.S. after legal admittance for permanent residence.

(2) Entities other than individuals must certify that they are at least 51 percent owned by individuals who are either citizens as identified under paragraph (c)(1)(i) of this section or legally admitted permanent residents residing in the U.S. This paragraph is not applicable if the entity is owned solely by members of one immediate family. In such instance, if at least one of the entity owners is a citizen or national, as defined in paragraph (c)(1) of this section, then the entity is eligible.

(d) *Legal authority and responsibility.* Each applicant must demonstrate that they have, or can obtain, the legal authority necessary to carry out the purpose of the grant, and they must evidence good standing from the appropriate state agency or equivalent.

(e) *Multiple grant eligibility.* An applicant may submit only one application in response to a solicitation, and must explicitly direct that it compete in either the general funds competition or in one of the named reserved funds competitions. Separate entities with identical or greater than 75 percent common ownership may only submit one application for one entity per year. Applicants who have already received a planning grant for the proposed project cannot receive another planning grant for the same project. Applicants who have already received a working capital grant for the proposed project cannot receive any additional grants for that project.

(f) *Active VAPG grant.* If an applicant has an active value-added grant at the time of a subsequent application, the currently active grant must be closed out within 90 days of the application submission deadline for the subsequent competition, as published in the annual NOFA.

§ 4284.921 Ineligible applicants.

(a) Consistent with the Departmental regulations, an applicant is ineligible if the applicant is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

(b) An applicant will be considered ineligible for a grant due to an outstanding judgment obtained by the U.S. in a Federal Court (other than U.S. Tax Court), is delinquent on the payment of Federal income taxes, or is delinquent on Federal debt.

§ 4284.922 Project eligibility.

To be eligible for a VAPG grant, the application must demonstrate that the project meets the requirements specified in paragraphs (a) through (c) of this section, as applicable.

(a) *Product eligibility.* Each product that is the subject of the proposed project must meet the definition of a value-added agricultural product, including a demonstration that:

(1) The value-added product results from one of the value-added methodologies identified in paragraphs (1)(i) through (v) of the definition of value-added agricultural product;

(2) As a result of the project, the customer base for the agricultural commodity or value-added product is expanded; and

(3) As a result of the project, a greater portion of the revenue derived from the marketing or processing of the value-added product is available to the applicant producer of the agricultural commodity.

(b) *Purpose eligibility.*

(1) The grant funds requested must not exceed the amount specified in the annual solicitation for planning and working capital grant requests, per § 4284.915.

(2) The matching funds required for the project budget must be eligible and without a real or apparent conflict of interest, available during the project period, and source verified in the application.

(3) The proposed project must be limited to eligible planning or working capital activities as defined at § 4284.923, as applicable, with eligible tasks directly related to the processing and/or marketing of the subject value-added product, to be demonstrated in the required work plan and budget as described at § 4284.922(b)(5).

(4) Applications that propose ineligible expenses in excess of 10 percent of total project costs will be deemed ineligible to compete for funds. Eligible applications selected for award must eliminate any ineligible expenses from the project budget.

(5) The project work plan and budget must demonstrate eligible sources and uses of funds and must:

(i) Present a detailed narrative description of the eligible activities and tasks related to the processing and/or marketing of the value-added product along with a detailed breakdown of all estimated costs allocated to those activities and tasks;

(ii) Identify the key personnel that will be responsible for overseeing and/or conducting the activities or tasks and provide reasonable and specific timeframes for completion of the activities and tasks;

(iii) Identify the sources and uses of grant and matching funds for all activities and tasks specified in the budget; and indicate that matching funds will be spent at a rate equal to or in advance of grant funds; and

(iv) Present a project budget period that commences within the start date range specified in the annual solicitation, concludes not later than 36 months after the proposed start date, and is scaled to the complexity of the project.

(6) Except as noted in paragraphs (b)(6)(i) and (ii) of this section, working capital applications must include a feasibility study and business plan completed specifically for the proposed value-added project by a qualified consultant. The Agency must concur in the acceptability or adequacy of the feasibility study and business plan for eligibility purposes.

(i) An Independent Producer applicant seeking a working capital grant of $50,000 or more, who can demonstrate that they are proposing market expansion for an existing value-added product(s) that they currently own and produce from at least 50 percent of their own agricultural commodity and that they have produced and marketed for at least 2 years at time of application submission, may submit a business or marketing plan for the value-added project in lieu of a feasibility study. These applications must still document for increased customer base and increased revenues

returning to the applicant producers as a result of the project, and meet all other eligibility requirements. Further, the waiver of the independent feasibility study does not change the proposal evaluation or scoring elements that pertain to issues that might be supported by an independent feasibility study, so applicants are encouraged to well-document their project plans and expectations for success in their proposals.

(ii) All four applicant types that submit a Simplified Application for working capital grant funds of less than $50,000 are not required to provide an independent feasibility study or business plan for the project/venture but must provide adequate documentation to demonstrate the expected increases in customer base and revenues resulting from the project that will benefit the producer applicants supplying the majority of the agricultural commodity for the project. All other eligibility requirements remain the same. The waiver of the requirement to submit a feasibility study and business plan does not change the proposal evaluation or scoring elements that pertain to issues that might be supported by a feasibility study or business plan, so applicants are encouraged to well-document their project plans and expectations for success in their proposals.

(7) If the applicant is an agricultural producer group, a farmer or rancher cooperative, or a majority-controlled producer-based business venture, the applicant must demonstrate that it is entering an emerging market unserved by the applicant in the previous two years.

(8) All applicants requesting working capital funds must either be currently marketing each value-added agricultural product that is the subject of the grant application, or be ready to implement the working capital activities in accord with the budget and work plan timeline proposed.

(c) *Reserved funds eligibility.* In addition to the requirements specified in paragraphs (a) and (b) of this section, the requirements specified in paragraphs (c)(1) and (2) of this section must be met, as applicable, if applicants choose to compete for reserved funds. All eligible, but unfunded reserved funds applications will be eligible to compete for general funds in that same fiscal year, as funding levels permit.

(1) If the applicant is applying for beginning farmer or rancher, or socially-disadvantaged farmer or rancher reserved funds, the applicant must provide the following documentation to demonstrate that the applicant meets all the requirements for one of these definitions.

(i) For beginning farmers and ranchers, documentation must include a description from each of the individual owner(s) of the applicant farm or ranch organization, addressing the qualifying elements in the beginning farmer or rancher definition, including the length and nature of their individual owner/operator experience at any farm in the previous 10 years, along with one IRS income tax form from the previous 10 years showing that each of the individual owner(s) did not file farm income; or a detailed letter from a certified public accountant or attorney certifying that each owner meets the reserved funds beginning farmer or rancher eligibility requirements. For applicant entities with multiple owners, all owners must be eligible beginning farmers or ranchers.

(ii) For socially disadvantaged farmers and ranchers, documentation must include a description of the applicant's farm or ranch ownership structure and demographic profile that indicates the owner(s)' membership in a socially disadvantaged group that has been subjected to racial, ethnic or gender prejudice; including identifying the total number of owners of the applicant organization; along with a self-certification statement from the individual owner(s) evidencing their membership in a socially disadvantaged group. All farmer and rancher owners must be members of a socially disadvantaged group.

(2) If the applicant is applying for Mid-Tier Value Chain reserved funds, the applicant must be one of the four VAPG applicant types and the application must provide documentation demonstrating that the project meets the Mid-Tier Value Chain definition, and must:

(i) Demonstrate that the project proposes development of a local or regional supply network of an interconnected group of entities (including nonprofit organizations, as appropriate) through which agricultural commodities and value-added products move from production through consumption in a local or regional area of the United States, including a description of the network, its component members, either by name or by class, and its purpose;

(ii) Describe at least two alliances, linkages, or partnerships within the value chain that link independent producers with businesses and cooperatives that market value-added agricultural commodities or value-added products in a manner that benefits small or medium-sized farms and ranches that are structured as a family farm, including the names of the parties and the nature of their collaboration;

(iii) Demonstrate how the project, due to the manner in which the value-added product is marketed, will increase the profitability and competitiveness of at least two, eligible, small or medium-sized farms or ranches that are structured as a family farm, including documentation to confirm that the participating small or medium-sized farms are structured as a family farm and meet these program definitions. A description of the two farms or ranches confirming they meet the Family Farm requirements, and IRS income tax forms evidencing eligible farm income is sufficient;

(iv) Document that the eligible agricultural producer group/cooperative/majority-controlled producer-based business venture applicant organization has obtained at least one agreement with another member of the supply network that is engaged in the value chain on a marketing strategy; or that the eligible independent producer applicant has obtained at least one agreement from an eligible agricultural producer group/cooperative/majority-controlled producer-based business venture engaged in the value-chain on a marketing strategy;

(A) For Planning grants, agreements may include letters of commitment or intent to partner on marketing, distribution or processing; and should include the names of the parties with a description of the nature of their collaboration. For Working Capital grants, demonstration of the actual existence of the executed agreements is required.

(B) Independent Producer applicants must provide documentation to confirm that the non-applicant agricultural producer group/cooperative/majority-controlled partnering entity meets program eligibility definitions, except that, in this context, the partnering entity does not need to supply any of the raw agricultural commodity for the project;

(v) Demonstrate that the applicant organization currently owns and produces more than 50 percent of the raw agricultural commodity that will be used for the value-added product that is the subject of the proposal; and

(vi) Demonstrate that the project will result in an increase in customer base and an increase in revenue returns to the applicant producers supplying the majority of the raw agricultural commodity for the project.

(d) *Priority.* In addition, applicants that demonstrate eligibility may apply for priority points if they propose projects that contribute to increasing opportunities for beginning farmers or ranchers, socially disadvantaged farmers or ranchers, or if they are Operators of small- or medium-sized farms or ranches that are structured as a family farm, propose Mid-Tier Value Chain projects, or are a farmer or rancher Cooperative.

(1) Applicants seeking priority points as beginning farmers or ranchers or as socially disadvantaged farmers or ranchers must provide the documentation specified in paragraphs (c)(1)(i) or (ii), as applicable, of this section. For entities with multiple owners or members, 51 percent of owners or members must be eligible beginning farmers or ranchers or socially disadvantaged farmers or ranchers, as applicable.

(2) Applicants seeking priority points as Operators of small- or medium-sized farms and ranches that are structured as a family farm must:

(i) Be structured as family farm;

(ii) Meet all requirements in the associated definitions; and

(iii) Provide the following documentation:

(A) A description from the individual owner(s) of the applicant organization addressing each qualifying element in the definitions, including identification of the average annual gross sales of agricultural commodities from the farm in the previous three years, not to exceed $250,000 for small operators or $1,000,000 for medium operators;

(B) The names and identification of the blood or marriage relationships of all applicant/owners of the farm; and

(C) A statement that the applicant/owners are primarily responsible for the daily physical labor and management of the farm with hired help merely supplementing the family labor.

(3) Applicants seeking priority points for Mid-Tier Value Chain proposals must be one of the four eligible applicant types and provide the documentation specified in paragraphs (c)(2)(i) through (c)(2)(vi) of this section, demonstrating that the project meets the Mid-Tier Value Chain definition.

(4) Applicants seeking priority points for a Farmer or Rancher Cooperative must:

(i) Demonstrate that it is a business owned and controlled by Independent Producers that is legally incorporated as a Cooperative; or that it is a business owned and controlled by Independent Producers that is not legally incorporated as a Cooperative, but is identified by the state in which it operates as a cooperatively operated business;

(ii) Identify, by name or class, and confirm that the Independent Producers on whose behalf the value-added work will be done meet the definition requirements for an Independent Producer, including that each member is an individual agricultural producer, or an entity that is solely owned and controlled by agricultural producers, that is directly engaged in the production of the majority of the agricultural commodity to which value will be added; and

(iii) Provide evidence of "good standing" as a cooperatively operated business in the state of incorporation or operations, as applicable.

§ 4284.923 Eligible uses of grant and matching funds.

In general, grant and cost-share matching funds have the same use restrictions and must be used to fund only the costs for eligible purposes as defined in paragraphs (a) and (b) of this section.

(a) Planning funds may be used to pay for a qualified consultant to conduct and develop a feasibility study, business plan, and/or marketing plan associated with the processing and/or marketing of a value-added agricultural product. Planning funds may not be used to compensate applicants or family members for participation in feasibility studies. However, in-kind contribution of matching funds to cover applicant or family member participation in planning activities is allowed so long as the value of such contribution does not exceed a maximum of 25 percent of the total project costs and an adequate explanation of the basis for the valuation, referencing comparable market values, salary and wage data, expertise or experience of the contributor, per unit costs, industry norms, etc., is provided. Final valuation for applicant or family member in-kind contributions is at the discretion of the Agency. Planning funds may not be used to evaluate the agricultural production of the commodity itself, other than to determine the project's input costs related to the feasibility of processing and marketing the value-added product.

(b) Working capital funds may be used to pay the project's operational costs directly related to the processing and/or marketing of the value-added product. Examples of eligible working capital expenses include designing or purchasing a financial accounting system for the project, paying salaries of employees without ownership or immediate family interest to process and/or market and deliver the value-added product to consumers, paying for inventory supply costs from a third party necessary to produce the value-added product from the agricultural commodity, and paying for a marketing campaign for the value-added product. In-kind contributions may include appropriately valued inventory of raw commodity to be used in the project. In-kind contributions of matching funds may also include contributions of time spent on eligible tasks by applicants or applicant family members so long as the value of such contribution does not exceed a maximum of 25 percent of the total project costs and an adequate explanation of the basis for the valuation, referencing comparable market values, salary and wage data, expertise or experience of the contributor, per unit costs, industry norms, etc. is provided. Final valuation for applicant or family member in-kind contributions is at the discretion of the Agency.

§ 4284.924 Ineligible uses of grant and matching funds.

Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, or their immediate family members having a personal, professional, financial or other interest in the outcome of the project; including organizational conflicts, and conflicts that restrict open and free competition for unrestrained trade. In addition, the use of funds is limited to only the eligible activities identified in § 4284.923 and prohibits other uses of funds. Ineligible uses of grant and matching funds awarded under this subpart include, but are not limited to:

(a) Support costs for services or goods going to or coming from a person or entity with a real or apparent conflict of interest, except as specifically noted for limited in-kind matching funds in § 4284.923(a) and (b);

(b) Pay costs for scenarios with noncompetitive trade practices;

(c) Plan, repair, rehabilitate, acquire, or construct a building or facility (including a processing facility);

(d) Purchase, lease purchase, or install fixed equipment, including processing equipment;

(e) Purchase or repair vehicles, including boats;

(f) Pay for the preparation of the grant application;

(g) Pay expenses not directly related to the funded project for the processing and marketing of the value-added product;

(h) Fund research and development;

(i) Fund political or lobbying activities;

(j) Fund any activities prohibited by 7 CFR parts 3015 and 3019, 2 CFR part 230, and 48 CFR subpart 31.2.

(k) Fund architectural or engineering design work;

(l) Fund expenses related to the production of any agricultural commodity or product, including seed, rootstock, labor for harvesting the crop, and delivery of the commodity to a processing facility;

(m) Conduct activities on behalf of anyone other than a specifically identified independent producer or group of independent producers, as identified by name or class. The Agency considers conducting industry-level feasibility studies or business plans, that are also known as feasibility study templates or guides or business plan templates or guides, to be ineligible because the assistance is not provided to a specific group of Independent Producers;

(n) Pay owner or immediate family member salaries or wages;

(o) Pay for goods or services from a person or entity that employs the owner or an immediate family member;

(p) Duplicate current services or replace or substitute support previously provided;

(q) Pay any costs of the project incurred prior to the date of grant approval, including legal or other expenses needed to incorporate or organize a business;

(r) Pay any judgment or debt owed to the United States;

(s) Purchase land; or

(t) Pay for costs associated with illegal activities.

§ 4284.925 Funding limitations.

(a) Grant funds may be used to pay up to 50 percent of the total eligible project costs, subject to the limitations established for maximum total grant amount.

(b) The maximum total grant amount provided to a grantee in any one year shall not exceed the amount announced in an annual notice issued pursuant to § 4284.915, but in no event may the total amount of grant funds provided to a grant recipient exceed $500,000.

(c) A grant under this subsection shall have a term that does not exceed 3 years, and a project start date within 90 days of the date of award, unless otherwise specified in a notice pursuant to § 4284.915. Grant project periods should be scaled to the complexity of the objectives for the project. The Agency may extend the term of the grant period, not to exceed the 3-year maximum.

(d) The aggregate amount of awards to majority controlled producer-based businesses may not exceed 10 percent of the total funds obligated under this subpart during any fiscal year.

(e) Not more than 5 percent of funds appropriated each year may be used to fund the Agricultural Marketing Resource Center, to support electronic capabilities to provide information regarding research, business, legal, financial, or logistical assistance to independent producers and processors.

(f) Each fiscal year, the following amounts of reserved funds will be made available:

(1) 10 percent to fund projects that benefit beginning farmers or ranchers, or socially-disadvantaged farmers or ranchers; and

(2) 10 percent to fund projects that propose development of mid-tier value chains.

(3) Funds not obligated by June 30 of each fiscal year shall be available to the Secretary to make grants under this subsection to eligible entities as determined by the Secretary.

§§ 4284.926–4284.929 [Reserved]

Applying for a Grant

§ 4284.930 Preliminary review.

The Agency encourages applicants to contact their State Office well in advance of the application submission deadline, to ask questions and to discuss applicant and project eligibility potential. At its option, the Agency may establish a preliminary review deadline so that it may informally assess the eligibility of the application and its completeness. The result of the preliminary review is not binding on the Agency. To implement this section, the Agency will issue a notification addressing this issue in accordance with § 4284.915.

§ 4284.931 Application package.

All applicants are required to submit an application package that is comprised of the elements in this section.

(a) *Application forms.* The following application forms (or their successor forms) must be completed when applying for a grant under this subpart.

(1) Form SF–424, "Application for Federal Assistance."

(2) Form SF–424A, "Budget Information-Non-Construction Programs."

(3) Form SF–424B, "Assurances—Non-Construction Programs."

(4) Form RD 400–4, "Assurance Agreement."

(5) Form RD 1940–20, "Request for Environmental Information." Applications for planning grants are generally excluded from the environmental review process by § 1940.333 of this title.

(6) All applicants are required to have a DUNS number (including individuals and sole proprietorships).

(b) *Application content.* The following content items must be completed when applying for a grant under this subpart:

(1) *Eligibility discussion.* The applicant must demonstrate in detail how the:

(i) Applicant eligibility requirements in §§ 4284.920 and 4284.921 are met;

(ii) Project eligibility requirements in § 4284.922 are met;

(iii) Eligible use of grant and matching funds requirements in §§ 4284.923 and 4284.924 are met; and

(iv) Funding limitation requirements in § 4284.925 are met.

(2) *Evaluation criteria.* Using the format prescribed by the application package, the applicant must address each evaluation criterion identified below.

(i) *Performance Evaluation Criteria.* As part of the application, applicants for both planning and working capital grants must suggest one or more relevant criterion that will be used to evaluate the performance of the grant project during its operational phase post-award, as benchmarks to ascertain whether or not the primary goals and objectives proposed in the work plan are accomplished during the project period. These benchmarks should relate to the overall project goal of creating and serving new markets, with a resulting increase in customer base and increase in revenues returning to the producer applicants; as well as to the practical and/or logistical activities and tasks to be accomplished during the project period. The Agency application package will provide additional instruction to assist applicants when responding to this criterion. Applicant suggested performance criteria will be incorporated into the applicant's semi-annual and final reporting requirements if selected for award, and will be specified in the grant agreement associated with the award. In addition, applicants for both planning and working capital grants must identify the number of jobs anticipated to be created or saved as a direct result of the project. Planning grant applicants should identify the number of jobs expected to be created or saved as a result of continuing the project into its operational phase. Working capital grant applicants should identify the actual number of jobs created or saved as a result of the project.

(ii) *Proposal evaluation criteria.* Applicants for both planning and working capital grants must address each proposal evaluation criterion identified in § 4284.942 in narrative form, in the application package.

(3) *Certification of matching funds.* Using the format prescribed by the application package, applicants must certify that:

(i) Cost-share matching funds will be spent in advance of grant funding, such that for every dollar of grant funds disbursed, not less than an equal amount of matching funds will have been expended prior to submitting the request for reimbursement; and

(ii) If matching funds are proposed in an amount exceeding the grant amount, those matching funds must be spent at a proportional rate equal to the match-to-grant ratio identified in the proposed budget.

(4) *Verification of cost-share matching funds.* Using the format prescribed by the application package, the applicant must demonstrate and provide authentic documentation from the source to confirm the eligibility and availability of both cash and in-kind contributions that meet the definition requirements for Matching Funds and Conflict of Interest in § 4284.902, as well as the following criteria:

(i) Matching funds are subject to the same use restrictions as grant funds, and must be spent on eligible project expenses during the grant funding period.

(ii) Matching funds must be from eligible sources without a real or apparent conflict of interest.

(iii) Matching funds must be at least equal to the amount of grant funds requested, and combined grant and matching funds must equal 100 percent of the total eligible project costs.

(iv) Unless provided by other authorizing legislation, other Federal grant funds cannot be used as matching funds.

(v) Matching funds must be provided in the form of confirmed applicant cash, loan, or line of credit; or provided in the form of a confirmed applicant or family member in-kind contribution that meets the requirements and limitations specified in § 4284.923(a) and (b); or provided in the form of confirmed third-party cash or eligible third-party in-kind contribution; or non-federal grant sources (unless otherwise provided by law).

(vi) Examples of ineligible matching funds include funds used for an ineligible purpose, contributions donated outside the proposed grant funding period, third-party in-kind contributions that are over-valued, or are without substantive documentation for an independent reviewer to confirm a valuation, conducting activities on behalf of anyone other than a specific Independent Producer or group of Independent Producers, expected program income at time of application, or instances where a real or apparent conflict of interest exists, except as detailed in § 4284.923(a) and (b).

(5) *Business plan.* For working capital grant applications, applicants must provide a copy of the business plan that was completed for the proposed value-added venture, except as provided for in §§ 4284.922(b)(6) and 4284.932. The Agency must concur in the acceptability or adequacy of the business plan. For all planning grant applications including those proposing product eligibility under "produced in a manner that enhances the value of the agricultural commodity," a business plan is not required as part of the grant application.

(6) *Feasibility study.* As part of the application package, applicants for working capital grants must provide a copy of the third-party feasibility study that was completed for the proposed value-added project, except as provided for at §§ 4284.922(b)(6) and 4284.932. The Agency must concur in the acceptability or adequacy of the feasibility study.

§ 4284.932 Simplified application.

Applicants requesting less than $50,000 will be allowed to submit a simplified application, the contents of which will be announced in an annual notice issued pursuant to § 4284.915. Applicants requesting working capital grants of less than $50,000 are not required to provide feasibility studies or business plans, but must provide information demonstrating increases in customer base and revenue returns to the producers supplying the majority of the agricultural commodity as a result of the project. *See* § 4284.922(b)(6)(ii).

§ 4284.933 Filing instructions.

Unless otherwise specified in a notification issued under § 4284.915, the requirements specified in paragraphs (a) through (e) of this section apply to all applications.

(a) *When to submit.* Complete applications must be received by the Agency on or before the application deadline established for a fiscal year to be considered for funding for that fiscal year. Applications received by the Agency after the application deadline established for a fiscal year will not be considered.

(b) *Incomplete applications.* Incomplete applications will be rejected. Applicants will be informed of the elements that made the application incomplete. If a resubmitted application is received by the applicable application deadline, the Agency will reconsider the application.

(c) *Where to submit.* All applications must be submitted to the State Office of Rural Development in the State where the project primarily takes place, or on-line through grants.gov.

(d) *Format.* Applications may be submitted as paper copy, or electronically via grants.gov. If submitted as paper copy, only one original copy should be submitted. An application submission must contain all required components in their entirety. Emailed or faxed submissions will not be acknowledged, accepted or processed by the Agency.

(e) *Other forms and instructions.* Upon request, the Agency will make available to the public the necessary forms and instructions for filing applications. These forms and instructions may be obtained from any State Office of Rural Development, or the Agency's Value-Added Producer Grant program Web site in *http://www.rurdev.usda.gov/rbs/coops/vadg.htm*.

§§ 4284.934–4284.939 [Reserved]

Processing and Scoring Applications

§ 4284.940 Processing applications.

(a) *Initial review.* Upon receipt of an application on or before the application submission deadline for each fiscal year, the Agency will conduct a review to determine if the applicant and project are eligible, and if the application is complete and sufficiently responsive to program requirements.

(b) *Notifications.* After the review in paragraph (a) of this section has been conducted, if the Agency has determined that either the applicant or project is ineligible or that the application is not complete to allow evaluation of the application or sufficiently responsive to program requirements, the Agency will notify the applicant in writing and will include in the notification the reason(s) for its determination(s).

(c) *Resubmittal by applicants.* Applicants may submit revised applications to the Agency in response to the notification received under paragraph (b) of this section. If a revised grant application is received on or before the application deadline, it will be processed by the Agency. If a revised application is not received by the specified application deadline, the Agency will not process the application and will inform the applicant that their

application was not reviewed due to tardiness.

(d) *Subsequent ineligibility determinations.* If at any time an application is determined to be ineligible, the Agency will notify the applicant in writing of its determination.

§ 4284.941 Application withdrawal.

During the period between the submission of an application and the execution of award documents, the applicant must notify the Agency in writing if the project is no longer viable or the applicant no longer is requesting financial assistance for the project. When the applicant notifies the Agency, the selection will be rescinded or the application withdrawn.

§ 4284.942 Proposal evaluation criteria and scoring applications.

(a) *General.* The Agency will only score applications for which it has determined that the applicant and project are eligible, the application is complete and sufficiently responsive to program requirements, and the project is likely feasible. Any applicant whose application will not be reviewed because the Agency has determined it fails to meet the preceding criteria will be notified of appeal rights pursuant to § 4284.903. Each such viable application the Agency receives on or before the application deadline in a fiscal year will be scored in the fiscal year in which it was received. Each application will be scored based on the information provided and/or adequately referenced in the scoring section of the application at the time the applicant submits the application to the Agency. Scoring information must be readily identifiable in the application or it will not be considered.

(b) *Scoring Applications.* The criteria specified in paragraphs (b)(1) through (b)(6) of this section will be used to score all applications. For each criterion, applicants must demonstrate how the project has merit, and provide rationale for the likelihood of project success. Responses that do not address all aspects of the criterion, or that do not comprehensively convey pertinent project information will receive lower scores. The maximum number of points that will be awarded to an application is 100. Points may be awarded lump sum or on a graduated basis. The Agency application package will provide additional instruction to assist applicants when responding to the criteria below.

(1) *Nature of the Proposed Venture (graduated score 0–30 points).* Describe the technological feasiblity of the project, of the project, as well as the operational efficiency, profitability, and overall economic sustainability resulting from the project. In addition, demonstrate the potential for expanding the customer base for the value-added product, and the expected increase in revenue returns to the producer-owners providing the majority of the raw agricultural commodity to the project. Applications that demonstrate high likelihood of success in these areas will receive more points than those that demonstrate less potential in these areas.

(2) *Qualifications of Project Personnel (graduated score 0–20 points).* Identify the individuals who will be responsible for completing the proposed tasks in the work plan, including the roles and activities that owners, staff, contractors, consultants or new hires may perform; and demonstrate that these individuals have the necessary qualifications and expertise, including those hired to do market or feasibility analyses, or to develop a business operations plan for the value-added venture. Include the qualifications of those individuals responsible to lead or manage the total project (applicant owners or project managers), as well as those individuals responsible for actually conducting the various individual tasks in the work plan (such as consultants, contractors, staff or new hires). Demonstrate the commitment and the availability of any consultants or other professionals to be hired for the project. If staff or consultants have not been selected at the time of application, provide specific descriptions of the qualifications required for the positions to be filled. Applications that demonstrate the strong credentials, education, capabilities, experience and availability of project personnel that will contribute to a high likelihood of project success will receive more points than those that demonstrate less potential for success in these areas.

(3) *Commitments and Support (graduated score 0–10 points).* Producer commitments to the project will be evaluated based on the number of independent producers currently involved in the project; and the nature, level and quality of their contributions. End-user commitments will be evaluated on the basis of potential or identified markets and the potential amount of output to be purchased, as evidenced by letters of intent or contracts from potential buyers referenced within the application. Other Third-Party commitments to the project will be evaluated based on the critical and tangible nature of the contribution to the project, such as technical assistance, storage, processing, marketing, or distribution arrangements that are necessary for the project to proceed; and the level and quality of these contributions. Applications that demonstrate the project has strong direct financial, technical and logistical support to successfully complete the project will receive more points than those that demonstrate less potential for success in these areas.

(4) *Work Plan and Budget (graduated score 0–20 points).* In accord with § 4284.922(b)(5), applicants must submit a comprehensive work plan and budget. The work plan must provide specific and detailed narrative descriptions of the tasks and the key project personnel that will accomplish the project's goals. The budget must present a detailed breakdown of all estimated costs associated with the activities and allocate those costs among the listed tasks. The source and use of both grant and matching funds must be specified for all tasks. An eligible start and end date for the project itself and for individual project tasks must be clearly indicated and may not exceed Agency specified timeframes for the grant period. Points may not be awarded unless sufficient detail is provided to determine that both grant and matching funds are being used for qualified purposes and are from eligible sources without a conflict of interest. It is recommended that applicants utilize the budget format templates provided in the Agency's application package.

(5) *Priority Points (lump sum score 0 or 10 points).* Priority points may be awarded in both the General Funds competition, as well as the Reserved Funds competitions. Qualifying applicants may request priority points if they meet the requirements for one of the following categories and provide the documentation specified in § 4284.922(d), as applicable. Priority categories include: Beginning Farmer or Rancher, Socially Disadvantaged Farmer or Rancher, Operator of a Small or Medium-sized farm or ranch that is structured as a Family Farm, Mid Tier Value Chain proposals, and Farmer or Rancher Cooperative. It is recommended that applicants utilize the Agency application package when documenting for priority points and refer to the documentation requirements specified in § 4284.922(d). All qualifying applicants in this category will receive 10 points.

(6) *Administrator Priority Categories (graduated score 0–10 points).* Unless otherwise specified in a notification issued under § 4284.915(b)(1), the Administrator of USDA Rural Development Business and Cooperative

Programs has discretion to award up to 10 points to an application to improve the geographic diversity of awardees in a fiscal year.

§§ 4284.943–4284.949 [Reserved]

Grant Awards and Agreement

§ 4284.950 Award process.

(a) *Selection of applications for funding and for potential funding.* The Agency will select and rank applications for funding based on the score an application has received in response to the proposal evaluation criteria, compared to the scores of other value-added applications received in the same fiscal year. Higher scoring applications will receive first consideration for funding. The Agency will notify applicants, in writing, whether or not they have been selected for funding. For those applicants not selected for funding, the Agency will provide a brief explanation for why they were not selected.

(b) *Ranked applications not funded.* A ranked application that is not funded in the fiscal year in which it was submitted will not be carried forward into the next fiscal year. The Agency will notify the applicant in writing.

(c) *Intergovernmental review.* If State or local governments raise objections to a proposed project under the intergovernmental review process that are not resolved within 90 days of the Agency's award announcement date, the Agency will rescind the award and will provide the applicant with a written notice to that effect. The Agency, in its sole discretion, may extend the 90-day period if it appears resolution is imminent.

§ 4284.951 Obligate and award funds.

(a) *Letter of conditions.* When an application is selected subject to conditions established by the Agency, the Agency will notify the applicant using a Letter of Conditions, which defines the conditions under which the grant will be made. Each grantee will be required to meet all terms and conditions of the award within 90 days of receiving a Letter of Conditions unless otherwise specified by the Agency at the time of the award. If the applicant agrees with the conditions, the applicant must complete, sign, and return the Agency's Form RD 1942–46, "Letter of Intent to Meet Conditions." If the applicant believes that certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any proposed changes to the Letter of Conditions by the applicant before the application will be further processed. If the Agency agrees to any proposed changes, the Agency will issue a revised or amended Letter of Conditions that defines the final conditions under which the grant will be made.

(b) *Grant agreement and conditions.* Each grantee will be required to sign a grant agreement that outlines the approved use of funds and actions under the award, as well as the restrictions and applicable laws and regulations that pertain to the award.

(c) *Other documentation.* The grantee will execute additional documentation in order to obligate the award of funds including, but not limited to,

(1) Form RD 1940–1, "Request for Obligation of Funds;"

(2) Form AD–1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transaction;"

(3) Form AD–1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions;"

(4) Form AD–1049, "Certification Regarding Drug-Free Workplace Requirements;"

(5) Form RD 400–4, "Assurance Agreement (under Title VI, Civil Rights Act of 1964);"

(6) Form SF–3881, "ACH Vendor/Miscellaneous Payment Enrollment Form;"

(7) RD Instruction 1940–Q, Exhibit A–1, "Certification for Contracts, Grants and Loans;" and

(8) Form SF–LLL, "Disclosure of Lobbying Activities."

(d) *Grant disbursements.* Grant disbursements will be made in accordance with the Letter of Conditions, and/or the grant agreement, as applicable. A disbursement request may be submitted by the grantee not more frequently than once every 30 days by using Form SF 270, "Request for Advance or Reimbursement." The disbursement request is typically in the form of a reimbursement request for eligible expenses incurred by the grantee during the grant funding period. Adequate supporting documentation must accompany each request, and may include, but is not limited to, receipts, hourly wage rates, personnel payroll records, contract progression certification, or other similar documentation.

§§ 4284.952–4284.959 [Reserved]

Post Award Activities and Requirements

§ 4284.960 Monitoring and reporting program performance.

The requirements specified in this section shall apply to grants made under this subpart.

(a) Grantees must complete the project per the terms and conditions specified in the approved work plan and budget, and in the grant agreement and letter of conditions. Grantees are responsible to expend funds only for eligible purposes and will be monitored by Agency staff for compliance. Grantees must maintain a financial management system, and property and procurement standards in accordance with Departmental Regulations.

(b) Grantees must submit prescribed narrative and financial performance reports that include a comparison of accomplishments with the objectives stated in the application. The Agency will prescribe both the narrative and financial report formats in the grant agreement.

(1) Semi-annual performance reports shall be submitted within 45 days following March 31 and September 30 each fiscal year. A final performance report shall be submitted to the Agency within 90 days of project completion. Failure to submit a performance report within the specified timeframes may result in the Agency withholding grant funds.

(2) Additional reports shall be submitted as specified in the grant agreement or Letter of Conditions, or as otherwise provided in a notification issued under § 4284.915.

(3) Copies of supporting documentation and/or project deliverables for completed tasks must be provided to the Agency in a timely manner in accord with the development or completion of materials and in conjunction with the budget and project timeline. Examples include, but are not limited to, a feasibility study, marketing plan, business plan, success story, distribution network study, or best practice.

(4) The Agency may request any additional project and/or performance data for the project for which grant funds have been received, including but not limited to,

(i) Information about jobs created and/or saved as a result of the project;

(ii) Increases in producer customer base and revenues as a result of the project;

(iii) Data regarding renewable energy capacity or emissions reductions resulting from the project;

(iv) The nature of and advantages or disadvantages of supply chain arrangements or equitable distribution of rewards and responsibilities for mid-tier value chain projects; and

(v) Recommendations from Beginning Farmers or Socially Disadvantaged Farmers.

(5) The Agency may terminate or suspend the grant for lack of adequate or timely progress, reporting, or documentation, or for failure to comply with Agency requirements.

§ 4284.961 Grant servicing.

All grants awarded under this subpart shall be serviced in accordance with 7 CFR part 1951, subparts E and O, and the Departmental Regulations with the exception that delegation of the post-award servicing of the program does not require the prior approval of the Administrator.

§ 4284.962 Transfer of obligations.

At the discretion of the Agency and on a case-by-case basis, an obligation of funds established for an applicant may be transferred to a different (substituted) applicant provided:

(a) The substituted applicant:

(1) Is eligible;

(2) Has a close and genuine relationship with the original applicant; and

(3) Has the authority to receive the assistance approved for the original applicant; and

(b) The project continues to meet all product, purpose, and reserved funds eligibility requirements so that the need, purpose(s), and scope of the project for which the Agency funds will be used remain substantially unchanged.

§ 4284.963 Grant close out and related activities.

Grant closeout is the administrative wrap-up of a grant that has concluded or has been terminated. Typical closeout activities include a letter to the grantee with final instructions and reminders for amounts to be de-obligated for any unexpended grant funds, final project performance reports due, submission of outstanding deliverables, audit requirements, or other outstanding items of closure.

§§ 4284.964–4284.999 [Reserved]

Dated: February 4, 2011.

Dallas Tonsager,

Under Secretary, Rural Development.

[FR Doc. 2011–3036 Filed 2–22–11; 8:45 am]

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Part III

Department of Housing and Urban Development

24 CFR Parts 901, 902, and 907
Public Housing Evaluation and Oversight: Changes to the Public Housing Assessment System (PHAS) and Determining and Remedying Substantial Default; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 901, 902, and 907

[Docket No. FR–5094–I–02]

RIN 2577–AC68

Public Housing Evaluation and Oversight: Changes to the Public Housing Assessment System (PHAS) and Determining and Remedying Substantial Default

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Interim rule.

SUMMARY: The changes implemented by this interim rule are intended to enhance the efficiency and utility of HUD's Public Housing Assessment System (PHAS). The interim rule makes 2 sets of amendments to improve evaluation and oversight of the Public Housing Program. First, it amends the PHAS regulations for the purposes of: Consolidating the regulations governing assessment of public housing in one part of the Code of Federal Regulations (CFR); revising certain PHAS regulations based on HUD's experience with PHAS since it was established as the new system for evaluating a public housing agency (PHA) in 1998; and updating certain PHAS procedures to reflect recent changes in public housing operations from conversion by PHAs to asset management. Second, this interim rule establishes new regulations that specify the actions or inactions by which a PHA can be determined to be in substantial default, the procedures for a PHA to respond to such a determination or finding, and the sanctions available to HUD to address and remedy substantial default by a PHA.

DATES: Effective date: March 25, 2011.

Comment due date: April 25, 2011.

ADDRESSES: Interested persons are invited to submit comments on this interim rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service, toll-free, at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Claudia Yarus, Department of Housing and Urban Development, Office of Public and Indian Housing, Real Estate Assessment Center (REAC), 550 12th Street, SW., Suite 100, Washington, DC 20410 at 202–475–8830 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339. Additional information is available from the REAC Internet site at *http://www.hud.gov/offices/reac/.*

SUPPLEMENTARY INFORMATION:

I. Changes to PHAS

A. Background on PHAS

The PHAS regulations codified in 24 CFR part 902 were established by a final rule published on September 1, 1998 (63 FR 46596). Prior to 1998, a PHA was evaluated by HUD with respect only to its management operations. PHAS expanded assessment of a PHA to four key areas of a PHA's operations: (1) The physical condition of the PHA's properties; (2) the PHA's financial condition; (3) the PHA's management operations; and (4) the residents' service and satisfaction assessment (through a resident survey). On the basis of these four indicators, a PHA receives a composite score that represents a single score for a PHA's entire operation and a corresponding performance designation. PHAs that are designated high performers receive public recognition and relief from some HUD requirements. PHAs that are designated standard performers may be required to take corrective action to remedy identified deficiencies. PHAs that are designated substandard performers are required to take corrective action to remedy identified deficiencies. PHAs that are designated troubled performers are subject to remedial action.

B. Public Housing Operating Fund Program

The regulations governing the Public Housing Operating Fund program are of key relevance to the proper operation of PHAs and, consequently, to PHAS. Operating Funds are made available to a PHA to provide assistance to a PHA for the operation and management of public housing; therefore, the regulations applicable to a PHA's operation and management of public housing must be considered in any changes proposed to PHAS. The regulations for the Public Housing Operating Fund program are found at 24 CFR part 990.

Subpart H of the part 990 regulations (§§ 990.255 to 990.290) establishes the requirements regarding asset management. Under § 990.260(a), PHAs that own and operate 250 or more dwelling rental units must operate using an asset management model consistent with the subpart H regulations. PHAs with fewer than 250 dwelling rental units may elect to transition to asset management, but are not required to do so. Recent HUD appropriations acts have provided through an administrative provision that PHAs that own or operate 400 or fewer public housing units may elect to be exempt from any asset management requirement imposed by HUD in connection with

HUD's Operating Fund rule, with one exception—a PHA seeking discontinuance of a reduction of subsidy under the operating fund formula shall not be exempt from asset management requirements.[1] Since requirements in appropriations acts, unless otherwise indicated, apply only to the fiscal year to which the appropriations act is directed, HUD's proposed rule to revise PHAS does not reflect this one-year provision.

The asset management model emphasizes project-based management, as well as long-term and strategic planning. For public housing, this represents a shift from a PHA-centric management model to a model consistent with the norms in the broader multifamily industry. Under this model, PHAs must implement project based management, project based budgeting, and project based accounting. Similarly, HUD funds and monitors PHAs at the project level. A project can be a reasonable grouping of buildings under an Annual Contributions Contract (ACC). One of the major shifts, then, in this interim rule (as opposed to the current rule) is to isolate the performance of individual projects. The current regulation, for example, provides Management Operations only at the PHA level, which can hide problem properties. The essential components of asset management are defined in the regulations in 24 CFR part 990, subpart H.

C. Proposed Amendments to PHAS

On August 21, 2008, at 73 FR 49544, HUD proposed amendments to its PHAS regulations. HUD proposed to retain the basic structure of PHAS and to require PHAs to be scored on performance based on evaluation of four indicators: physical condition, financial condition, management operations, and the PHA's management of its Capital Fund program. The organization of the four indicators differed from the original PHAS indicators in that PHA's management of its Capital Fund program, originally part of the management operations indicator, was proposed to replace the resident satisfaction indicator. HUD proposed that resident services and satisfaction be assessed as part of the management operations indicator. The August 21, 2008, proposed rule also retained the principle that evaluation under the PHAS indicators would continue to rely on information that is verifiable by a third party, wherever possible.

Overview of Proposed Changes to PHAS

The August 21, 2008, rule proposed to modify PHAS primarily to conform to the new regulations on the Public Housing Operating Fund program and the conversion by PHAs to asset management, including project-based budgeting, project-based accounting, and project-based performance evaluation. Highlights of some of the major changes proposed to each of the four current PHAS indicators are as follows:

Physical. The physical inspection indicator would have remained largely unchanged. Independent physical inspections would have continued to be conducted on each public housing project, although the frequency of inspections would have depended on the scores of individual projects, not the score for the entire PHA. For example, if a specific project scored below 80 points, it would be inspected the following year, regardless of whether the overall physical score for the PHA, based on all projects, was 80 points or higher (as is the case in the currently codified PHAS regulations). If a PHA's overall physical score were less than 80 points, and one or more projects scored 80 points or above, those projects that scored 80 points or above would be inspected every other year.

Financial. The financial assessment system would have been modified to include an assessment of the financial condition of each project. A PHA would have continued to submit an annual Financial Data Schedule (FDS) to HUD that contained financial information on all major programs and business activities. However, for purposes of PHAS, the PHA would have been scored on the financial condition of each project, and these scores would be the basis for a program-wide score.

Management. The current management operations assessment system relies on PHA submission of a range of information that is self-certified. Under the proposed rule, this current system would have been replaced with management reviews conducted of each project by HUD staff (or, where applicable, HUD's agents). Preferably, such reviews would have been conducted annually, consistent with the standards for HUD's subsidized housing programs. As part of this project management review process, HUD would have examined a PHA's performance in the area of resident programs and participation, thereby eliminating a separate resident satisfaction survey.

Resident Satisfaction Surveys. A PHA's performance in the area of resident programs and participation would have been evaluated as part of the project management review, thus eliminating the need for a separate indicator on resident satisfaction and, therefore, a separate satisfaction survey. The project management review would have included a subindicator that would measure efforts to coordinate, promote, or provide effective programs and activities to promote economic self-sufficiency of residents, and measure the extent to which residents are provided with opportunities for involvement in the administration of the public housing. This subindicator would have included all of the elements regarding economic self-sufficiency and resident participation that are included in the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act) at section 6(j) of the 1937 Act (42 U.S.C. 1437d(j)).

HUD agrees that resident input into the assessment process is important. HUD is committed to exploring resident satisfaction, participation, and self-sufficiency measures in the final rule that will follow this interim rule. Accordingly, HUD seeks input from the public in the form of comments to this interim rule on establishing more meaningful measures in these areas.

Capital Fund program. HUD proposed to establish a new indicator, previously part of the management operations indicator, which would have measured a PHA's performance with respect to the obligation and expenditure of Capital Fund program grants. This Capital Fund program indicator can only be measured at the PHA level. This Capital Fund program indicator, based on a requirement of section 6(j) of the 1937 Act (42 U.S.C. 1437d(j)(1)(I)(2)), is required by statute to be assessed at that level. HUD believes that this is a separate subject from the management indicator and therefore is more appropriate as a separate indicator. In addition to the changes in the four indicators, discussed above, the August 21, 2008, rule proposed to modify the score adjustment for physical condition and neighborhood environment. This adjustment would have been applied to the management operations indicator on a project-by-project basis rather than to the physical condition indicator. The statutory language at 42 U.S.C. 1437d(j)(K)(I)(2) states that HUD shall reflect in the weights assigned to the various indicators the differences in the difficulty in managing individual projects that result from their physical condition and neighborhood

[1] *See,* for example, section 225 of Title IV of Division K of the Consolidated Appropriations Act, 2008 (Pub. L. 110–161, approved December 26, 2007); section 225 of the Omnibus Appropriations Act, 2009 (Pub. L. 111–8, approved March 11, 2009); and section 223 of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117, approved December 16, 2009).

environment. The application of the adjustment to the management operations indicator would specifically address the difficulty in managing individual projects, and would also result in a true physical condition score without any adjustments outside of the physical condition inspection results.

The proposed rule also included, as appendices, scoring notices for the PHAS indicators that provided more detail on how each indicator and subindicator would have been scored. Additional proposed changes to PHAS included:

- Corrective Action Plans would replace current Improvement Plans, addressed in detail at 24 CFR 902.73.
- References to the Troubled Agency Recovery Center (TARC), a program office within HUD to which troubled PHAs were referred for oversight, monitoring, or other remedial action, would be removed, since the TARC no longer exists. The duties and responsibilities of the TARCs have been transferred to and assumed by HUD's field offices.

Finally, the August 21, 2008, rule proposed to establish, in new part 907, the regulations governing the determination of, and remedies for, substantial default. The regulations applicable to substantial default are currently codified in HUD's PHAS regulations. However, a determination of substantial default is not limited to troubled performance or violation of PHAS requirements. Accordingly, HUD determined that it was more appropriate for substantial default regulations to be codified in a separate CFR part.

II. Differences Between This Interim Rule and the Proposed Rule

This interim rule adopts the changes proposed in the August 21, 2008, proposed rule with the exception of provisions identified in this Section II.

One of the key changes to PHAS proposed by the August 21, 2008, rule was to replace the system of PHA self-certification for the management operations indicator with onsite management reviews, consistent with monitoring practices in HUD's multifamily housing programs. Many commenters expressed concern over: (1) Whether HUD would have the resources and/or capacity to conduct management reviews of all public housing projects every several years; (2) possible issues of subjectivity in the scoring of these management reviews; and (3) the weights and measures assigned to the scored components of the management review.

In response to these concerns, and to provide both PHAs and HUD more time to develop and implement a more objective management review tool, this interim rule does not include this proposed change. This interim rule provides that the management review will be used as a diagnostic and feedback tool. In turn, three components that were part of the management review—relating to tenant accounts receivable, occupancy rate, and accounts payable—will be derived from the PHA's annual FDS. These three items represented 60 percent of the scored items on the management review. By relying on the FDS for these three items, HUD can issue an annual (or bi-annual, where applicable) overall PHAS score for each PHA. In the case where low PHAS scores indicate potential management problems, the management review can aid in diagnosing the nature of the problem and determining appropriate corrective actions.

As in the proposed rule, this interim rule contains three items—tenant accounts receivable, occupancy rate, and accounts payable—under the management operations indicator. Because other proposed elements are not adopted by this interim rule, HUD has rebalanced the scoring for the remaining indicators. The proposed management elements not adopted here are utility consumption, turnaround time, work orders, security, the components based on unit inspections, economic self-sufficiency, and resident involvement. The physical condition indicator has increased from 30 to 40 points; the financial condition indicator has increased from 20 to 25 points; and the management operations indicator has decreased from 40 to 25 points. The overall value of the Capital Fund program indicator (10 points) remains unchanged.

However, the Capital Fund program indicator itself has been restructured in a manner that HUD believes better tracks actual performance in respect to the use of Capital Funds for capital activities, whereas the proposed rule simply tracked statutory compliance. The proposed Capital Fund Program Indicator gave full points for timely obligation and expenditure of funds under the statute, a metric that does not necessarily measure the actual use of capital funds for modernization and capital needs; for example, a PHA can transfer a portion of its Capital Fund grant to PHA operations. HUD believes that success in addressing capital needs will be reflected in higher occupancy rates. This interim rule, therefore, while similarly providing 5 points for timely obligation, introduces a new measure based on a PHA's occupancy rate. In order to receive the full 5 points, a PHA's adjusted occupancy rate (that is, adjusted for HUD-approved vacancies) must be 96 percent or more. In recognition of the impact of these changes to the Capital Fund subindicators, this interim rule revises the definition of Capital Fund-troubled. The new definition indicates that a PHA must achieve a score of at least five points, or 50 percent.

Small deregulated PHAs with fewer than 250 units will receive a PHAS assessment as follows:

- High performers will receive PHAS assessments every 3 years;
- Standard and substandard performers will receive PHAS assessments every other year; and
- Overall troubled and Capital Fund-troubled PHAs will receive PHAS assessments every year.

All projects that score 90 points or higher on their physical condition inspections will be inspected every 3 years, consistent with HUD's multifamily housing programs. Projects that score at least 80 points but fewer than 90 points will receive a physical condition inspection every other year. Projects that score less than 80 points will receive a physical condition inspection every year. All projects in overall troubled and Capital Fund-troubled PHAs will receive a physical condition inspection every year.

In the baseline year, every PHA will receive an overall PHAS score and in all four of the PHAS indicators: Physical condition; financial condition; management operations; and Capital Fund program. This will allow a baseline for the physical condition inspections and the 3–2–1 inspection schedule, as well as a baseline year for the small deregulated PHAs.

In addition to these more significant changes, there were other minor changes in this interim rule from the proposed rule. These include:

1. Mixed-finance projects will not receive financial or management scores.

2. The rule has been amended to indicate that, for exigent health and safety (EHS) violations, a PHA may abate the effect of the violation without necessarily correcting or remedying the condition. For example, a PHA may move a family into a different unit until fire damage is repaired.

3. The rule has been amended to modify the standards for Debt Service Coverage Ratio (DSCR) such that any project with a DSCR of 1.25 or higher receives the full points.

Specific scoring procedures that HUD uses will be published separately in the **Federal Register** for public comment.

III. Key Differences Between This Interim Rule and Currently Codified PHAS Regulation [2]

• The current codified PHAS regulation scores the physical, financial condition, management operations, and resident service and satisfaction indicators. In this interim rule, HUD removes the resident service and satisfaction indicator, as well as the resident survey, while HUD considers better means of accurately measuring resident satisfaction, tenant participation, and the efficacy of resident self-sufficiency efforts to be included in the final rule. HUD agrees that resident input into the assessment process is important. HUD is committed to exploring resident satisfaction, self-sufficiency, and participation measures in the final rule, which will be promulgated subsequent to and based on HUD's experience with, and the public comments on, this interim rule. Accordingly, the agency seeks input from the public, including PHA residents and PHAs, as well as other interested members of the public, on establishing more meaningful measures in these areas, including suggestions for what the specific items measured might be and methods of measurement.

• The Capital Fund indicator is added as the 4th indicator.

• Under the interim rule, HUD has removed the management operations certification as a scored element. Instead, the management operations indicator will be limited to three items in this interim rule—occupancy rate, accounts payable, and tenant accounts receivable, all drawn from a PHA's annual financial information. The onsite management review will not be scored for the management operations indicator. As a result, the overall management operations indicator has been reduced from 40 points to 25 points.

• The physical condition indicator has increased to 40 points from 30 points; the financial condition indicator has been reduced from 30 points to 25 points; and the new Capital Fund Program indicator will be 10 points.

• There are changes to the adjustment for physical condition and neighborhood environment. In the currently codified regulation, the adjustment allows a total of 3 points, one point each for 3 areas (*see* § 902.25(b)(1)). This interim rule provides for an adjustment of 2 points, 1 for poor physical condition of the project and 1 for the economic condition of the major census tract in which a project is located. The physical condition adjustment in this interim rule applies to projects at least 28 years old; in the current CFR codification, the adjustment applies to 10 year old properties. The neighborhood environment adjustment in this interim rule applies to projects located in census tracts where at least 40 percent of the families are living below the poverty rate. In the currently codified regulation, that adjustment applies where 51 percent of the families in the immediately surrounding area live below the poverty rate.

• This interim rule provides increased incentive for projects that perform well on the physical inspection. Projects in PHAs with 250 or more dwelling units that score 90 or higher on their physical inspection will be inspected every 3 years under the interim rule, while projects that receive at least 80 points but less than 90 points will be inspected every 2 years. All other projects will receive a physical condition inspection every year. All projects that are in overall troubled and Capital Fund-troubled PHAs will receive a physical condition inspection every year.

• The financial condition indicator under the currently codified regulation assesses the financial condition of the entire PHA. Under this interim rule, a financial condition score for each project will be calculated, as well as a composite score for the entire PHA.

• Under this interim rule, a PHA may immediately abate the effect of an exigent health and safety (EHS) violation and later correct the condition, under § 902.22(f). Section 902.24(a)(2) of the codified regulation allows only for correction.

• References to the former Troubled Agency Recovery Center (TARC) are removed. Those former duties are now handled in the HUD field office.

The definition of a high performer remains the same as in the currently codified regulation. A PHA that achieves a score of at least 60 percent of the points available under the physical condition, financial condition, and management operations indicators, and at least 50 percent under the Capital Fund indicator, and achieves an overall PHAS score of 90 percent or greater of the total available points under PHAS, shall be designated a high performer. A PHA shall not be designated a high performer if it scores below the threshold established for any indicator.

IV. Public Comments Received on August 21, 2008, Proposed Rule

The proposed rule published on August 21, 2008, provided for the public comment period to end on October 20, 2008. During that comment period, HUD made available to the public on its Web site a scoring template. In order to ensure that all commenters had an equal opportunity to address this new information, HUD reopened the comment period on November 24, 2008, and solicited comments through January 8, 2009.

HUD received approximately 138 comments during the first comment period and an additional 25 comments during the reopened comment period. Comments were from public housing-related trade associations, housing authorities, advocacy organizations, and individuals. This section of the preamble, which addresses the public comments, organizes the comments by subject category, with a brief description of the comment and HUD's response to the comment.

Several commenters expressed their support of the rule rather than raising issues to be addressed, including support for focusing on the performance of projects, the removal of the "troubled" designation for substandard agencies, and the elimination of both entity-wide scoring and self-certifications for management operations.

General Comments

Comment: A number of commenters stated that the proposed rule was overly complex, burdensome, overly stringent, or contrary to the Department's goals of administrative streamlining.

HUD Response: As the preamble to the proposed rule stated, a revised PHAS is made necessary by the transition of public housing's budgeting, funding, and reporting systems from one that was entity-wide to one that is project-based. Though the evaluation emphasis has shifted from the PHA as a whole to individual projects, the interim rule does not impose any more regulation than what has been in place. By eliminating the resident satisfaction survey, the management certification, and, in this interim rule, the management review, HUD has considerably streamlined the evaluation process. All of the data are collected from three sources—the FDS, the physical inspection, and the electronic Line of Credit Control System (eLOCCS). No data point in the interim rule requires any submission from a PHA other than what is already required. Since the FDS is already generated by the PHA and is required by

[2] "Currently codified PHAS regulation" refers to the PHAS regulation in 24 CFR part 902 (Government Printing Office, April 1, 2010).

existing rule, by OMB A–133, and by the Annual Contributions Contract (ACC), using this data to evaluate a project's performance cannot be considered burdensome. Moreover, because HUD conducts the physical inspection and tallies the results, there is no PHA data submission for this indicator.

Comment: Commenters expressed concern over implementation of the onsite management review, which, as proposed, would have accounted for 40 percent of a PHA's overall PHAS score. Commenters expressed concern over the capacity of HUD staff to administer these reviews, the specific elements to be scored, the weights and measures associated with those elements, potential subjectivity, and the overall weight associated with this indicator.

HUD Response: In response to public comments, HUD has removed the management review as a scored element in this interim rule. Instead, the management operations indicator will be limited to three items in this interim rule—occupancy rate, accounts payable, and tenant accounts receivable, all drawn from a PHA's annual financial information. As a result, the overall management operations indicator has been reduced from 40 points to 25 points, with the remaining points assigned to the physical condition indicator and the financial condition indicator.

HUD still regards the onsite management review as critical to its task of effective oversight of the public housing portfolio, as is the case in multifamily housing. Under this interim rule, management reviews will not be scored but instead will be used for both compliance (not scored) and as a diagnostic instrument for performance.

Comment: Commenters requested clarification regarding how the proposed rule would apply to Moving-to-Work (MTW) agencies, including inspection protocols, information submissions, energy conservation, energy audits, and capital fund.

HUD Response: MTW agencies are subject to their respective MTW agreements. In most cases, the MTW agreements require MTW agencies to submit annual financial information and be subject to the same standards and protocols for physical inspections, management reviews, and obligation/expenditure deadlines as non-MTW agencies. However, the MTW agreements allow MTW agencies the option of carrying over their pre-MTW PHAS scores or being scored under the applicable PHAS regulation.

Comment: Several commenters indicated that, by producing a program-wide score for a PHA, the proposed rule was inconsistent with the goals of asset management (with the focus on project-level performance). Another commenter stated that PHAs should be scored at both the project-level and the PHA level. One commenter stated that only the overall score should be the PHAS score. Some commenters stated that it is duplicative to score individual projects on items that are PHA-wide responsibilities, such as energy, security, budgeting, tracking of work orders, and accounts payable.

HUD Response: As a result of the Operating Fund program regulations, published and developed through negotiated rulemaking, both HUD and PHAs have been transitioning to asset management, with project-level budgeting, funding, accounting, management, and oversight. At the same time, Section 6(j) of the 1937 Act requires HUD to develop a system to measure the management performance of whole PHAs, along with processes for designating troubled PHAs. This interim rule balances the need to provide for measurements at the project level, as required for asset management, with the need to designate troubled PHAs, as required under the statute.

Comment: Commenters suggested that the proposed rule should provide for a mechanism for adjusting scores (both overall and for particular components) as a result of funding shortfalls, noting that operating subsidy proration levels were between 84 percent and 90 percent from 2006 to 2009. Commenters suggested various formulas for this adjustment.

HUD Response: HUD's position is it was not the intent of Congress, in establishing section 6(j) of the 1937 Act, to make allowances for funding, as the statute makes no mention of funding allowances. The statute does, however, mention adjustments for physical condition and neighborhood environment (*see* 42 U.S.C. 1437d(1)(I)(2)), indicating that Congress did intend for adjustments based on those items, but did not intend for adjustments based on funding levels. Moreover, HUD believes that it is the primary intent of the system to provide an indication of the performance of public housing, regardless of funding levels, which is consistent with the current rule. Finally, it should be observed that a number of PHAs have achieved high performance ratings with current funding levels.

Comment: Some commenters stated that performance standards based on multifamily housing are inappropriate for public housing, or that the rule otherwise uses inappropriate standards more applicable to non-public housing multifamily projects, such as tax credit projects, which can have more amenities than public housing.

HUD Response: HUD disagrees with these comments. The Operating Fund program regulations clearly establish that public housing shall transition to asset management, consistent with standards and practices in multifamily housing. Furthermore, the physical condition standards for HUD public housing and multifamily housing are the same. In addition, multifamily properties are assessed by project, as PHAs will be assessed under this interim rule.

Comment: Several comments expressed concern that it was either too soon for HUD to change PHAS, overall, or that it was premature to begin measuring the performance of projects.

HUD Response: HUD disagrees with this comment. The transition to project-based budgeting, funding, and accounting is in its 5th year, with full implementation expected in 2011. An appropriate mechanism is needed for measuring the management performance of projects. Moreover, it would be a burden on PHAs, which are transitioning to asset management, to retain the existing reporting systems established under the PHAS regulations, prior to amendment by this interim rule, which focus on entity-wide performance.

Comment: Several commenters expressed concern over whether HUD's systems will be ready to implement the new scoring methodologies and the different data collection efforts.

HUD Response: All data elements necessary for scoring are in place and currently captured through the Office of Public and Indian Housing information technology systems, REAC's physical inspection system, eLOCCS, the Public Housing Information Center (PIC), or the FDS, greatly simplifying administrative systems.

Comment: Commenters requested that the implementation be postponed, and requested that PHAs have at least one year from date of publication to effective date, or some other enlarged time period.

HUD Response: HUD has not adopted this recommendation. There is no adverse impact on PHAs in terms of needing to modify reporting systems in order to comply with the various scoring elements under this rule. PHAs are already subject to the independent physical inspections, and the information that HUD will use to score the financial condition and management operations indicators is already contained within the FDS that PHAs

began submitting with fiscal years ending June 30, 2008. Scoring for the Capital Fund program indicator is taken directly from eLOCCS and the PIC. Moreover, the information that HUD will be using to generate PHAS scores is similar to the information scored that has traditionally been scored under the currently codified PHAS regulations, only with an emphasis on project-level data.

Comment: Many commenters recommended that the period of assessment for the management review conform either with the PHA's fiscal year or with calendar years.

HUD Response: Under the August 21, 2008, rule, HUD proposed that certain elements on the management review would be assessed as of the most recently completed month or as of the most recent 12-month period, but not necessarily the most recently completed fiscal year. Commenters generally preferred that the assessment year always coincide with the PHA's fiscal year. Because HUD will not be scoring the management review, and because both financial and management operations data will be derived from the FDS and possible additional points due to the physical condition, neighborhood environment (or both) of a project, the assessment year under this interim rule will now coincide with the PHA's fiscal year, as is the case under the currently codified PHAS regulations, which is not changed by this interim rule. Also, using fiscal years is an accepted business practice. HUD will use the current fiscal year data from the FDS and eLOCCS and the latest physical condition score to arrive at the PHAS score.

Comment: Several commenters requested clarification as to how the proposed rule would apply to mixed-finance projects or recommended that mixed-finance projects be exempted from PHAS, or that specific elements, such as financial condition or management condition scoring, not be applied to mixed-finance projects. With respect to financial condition, commenters stated that there is a conflict between generally accepted accounting principles (GAAP) and the way mixed-finance projects are funded and organized.

HUD Response: This interim rule clarifies that mixed-finance projects will continue to be subject to the independent physical inspections. These inspection scores will then be included with other physical inspection scores to determine the PHA's overall physical condition score. However, because of the special nature of mixed-finance projects, especially in the limited financial data submitted on these projects, mixed-finance projects will not receive a financial condition or management operations score. Mixed-finance projects are, by definition, owned by an entity other than the PHA. As such, PHAs report only "pass-through" activity on the FDS—essentially, the subsidy earned and the subsidy transferred. HUD does not receive detailed information on operating revenues or operating expenses on mixed-finance projects. Because HUD does not include detailed financial information on mixed-finance projects, it cannot determine occupancy, accounts payable, or tenant accounts receivable through the FDS. As a result, mixed-finance projects will also be excluded from the management operations indicator.

HUD specifically seeks comment on how best to include mixed-finance projects under PHAS.

Comment: A number of comments were received requesting that certain fair housing requirements, including accessibility requirements and fair housing training for PHA staff, be included as part of the management review. One commenter stated that existing methods of enforcement should suffice.

HUD Response: Although, in the operation of public housing, PHAs must adhere to various fair housing requirements, the oversight of those requirements is the responsibility of HUD's Office of Fair Housing and Equal Opportunity (FHEO). Only FHEO, for example, can issue fair housing findings. HUD is continuing to work with FHEO, and solicits input from the public, to better determine what data elements, if any, that PIH staff can obtain during onsite reviews, and through other means, that can assist FHEO in its monitoring functions and to affirmatively further fair housing.

Comment: Some commenters recommended that the regulations be changed to increase the exemption from asset management (currently fewer than 250 public housing units). Other commenters stated that PHAs that are exempt from asset management should not be subject to PHAS. One other commenter stated that PHAs already subject to inspection by other agencies should be exempt from PHAS.

HUD Response: The regulatory exemption for small PHAs is part of the Operating Fund program regulation at 24 CFR part 990. Although, as noted earlier in this preamble, the Public Housing Operating Fund program regulations are relevant to changes to PHAS, this rulemaking is focused on changes to PHAS only, and changes to the Operating Fund program are outside the scope of this rulemaking (however, section 223, Div. A, Tit. II of the 2010 Consolidated Appropriations Act, Pub. L. 111–117, states that PHAs "that own and operate 400 or fewer public housing units may elect to be exempt from any asset management requirement imposed by the Secretary of Housing and Urban Development in connection with the operating fund rule" (except for stop-loss PHAs)). Additionally, even for PHAs that are exempt from asset management and which treat their entire public housing portfolio as one project, HUD still has a responsibility for monitoring performance. Finally, although PHAs may also be reviewed from time to time as to certain criteria based on their participation in other programs, PIH must also do the assessment of PHAs required by statute (42 U.S.C. 1437d(j)).

Comment: A commenter asked for clarification as to whether the term "project," when used in the rule, also meant "asset management project" as defined under PIH Notice 2006–10. The same commenter asked for HUD to define "statistically valid sample" and "crime-related problem." Another commenter asked to remove "decent, safe, and sanitary housing" and replace it with "affordable."

HUD Response: When HUD first required conversion to asset management, HUD asked PHAs to identify "asset management projects," or AMPs, so as to differentiate with "developments" as listed in the PIC (Inventory Management System (IMS)). AMPs are now simply referred to as "projects" and are identified as so in PIC. HUD has added the definition of "statistically valid sample" in § 902.3 of the interim rule. Since the management review under this interim rule will not be used to score management operations, it is not currently necessary to define "crime-related problem." This interim rule does not change the phrase "decent, safe, and sanitary," which is a statutory standard for HUD-assisted housing.

Comment: Several commenters disagreed with the proposal that a PHA could not be high-performing if 10 percent of its units fail the physical, financial, or management indicators.

HUD Response: HUD agrees with this comment, and has determined to retain the definition of high performer that is in the currently codified regulation and not add another layer of complexity to the definition.

Comment: Several commenters stated that certain classifications of PHAs should be subject to less frequent PHAS scoring, either because of their size

(small PHAs) or recent performance. Several comments suggested that HUD modify the inspection frequency for public housing, consistent with the standards in HUD's multifamily housing programs, or alternatively that the size of the PHA should not dictate the frequency of inspections, but rather that frequency should be based on achieving a certain score. With respect to the management assessment, a commenter states that if a PHA meets certain goals, it should be exempt from the following year's management assessment.

HUD Response: HUD agrees and has changed the overall PHAS scoring frequency in response to these comments for physical condition inspections and the Deregulation for Small Public Housing Agencies (68 FR 37664, June 24, 2003) (small public housing agencies are those with fewer than 250 dwelling units). With this rule, HUD is changing the frequency of physical inspections, adopting HUD's multifamily housing standard. Under the currently codified regulations, a PHA's projects are inspected biennially (every 2 years) if they achieve a physical condition score of 80 points or higher. In contrast, in HUD's multifamily programs, projects with a physical condition score of 90 points or higher are inspected triennially (every 3 years). The interim rule has been modified to reflect HUD's multifamily score-based inspection frequency. As a consequence, a public housing project scoring 90 points and above will be inspected triennially; a public housing project scoring less than 90 and at least 80 points will be inspected biennially; and a public housing project scoring below 80 points will be inspected annually (known as "3–2–1"). Previously, HUD was concerned that extended periods between inspections resulted in significant declines in inspection scores; however, recent data for public housing properties that scored 90 points or higher does not show any significant drop-off in scores when those projects are inspected triennially. HUD will continue to monitor the interval data to ascertain that this change does not result in adverse effects. Further, if a management review or some other event (e.g., multiple Exigent Health and Safety (EHS) issues) should cause HUD to believe that the project is in need of a physical inspection, it may so schedule one at its sole discretion. Likewise, HUD may extend the time between inspections for cause as HUD determines.

With this rule, HUD is providing additional relief to small PHAs that are deregulated and is basing the frequency of PHAS assessments on the overall PHAS score. A small PHA that is a high performer will receive a PHAS assessment every 3 years; a small PHA that is a standard or substandard PHA will receive a PHAS assessment every 2 years; and all other small PHAs, including overall troubled and Capital Fund-troubled, will receive a PHAS assessment annually. All overall troubled projects receive a physical inspection annually.

Physical Condition Indicator

Comment: Commenters stated that the physical inspection scoring process is overly complex, difficult to understand, and should be simplified. Another commenter suggested that the physical inspections be modified to capture actual physical needs. Another commenter stated that HUD was changing the physical inspection standards to a tougher standard than currently used.

HUD Response: The physical inspection standards, established under 24 CFR part 5, are outside the scope of this rulemaking. These standards are the same for public housing and HUD's multifamily housing programs. The physical inspection system is designed to assess the livability of a property to the aforementioned "decent, safe, and sanitary" standard. It is not designed to assess or evaluate the remaining useful life of building and property components. HUD plans to update its requirements related to the Physical Needs Assessment in a separate rulemaking, which should address the concern raised by the comment regarding physical needs. The standards for physical inspections have not been changed by this interim rule.

Comment: Several commenters objected to PHAs being penalized when a tenant refuses or impedes access to a unit, thereby preventing the independent inspector from inspecting the unit, and indicated that these situations are beyond a PHA's control, or that a pattern of noncompliance rather than one incident should be required to warrant a penalty.

HUD Response: The prior PHAS regulation at § 902.24(d) and at § 902.20(f) states that all PHAs are required by the Annual Contributions Contract (ACC) to provide HUD or its representative with access to its projects and to all units and appurtenances in order to permit physical inspections. This provision is now at § 902.20(f) in this interim rule, and the substance was not changed. HUD does not agree that such situations are beyond a PHA's control because it is the responsibility of a PHA to ensure that its residents are aware of the physical condition inspection requirement, and if a resident does not comply, a PHA may initiate eviction proceedings for noncompliance with the lease.

Comment: One commenter recommended that HUD eliminate the physical assessment subsystem (PASS) as too costly.

HUD Response: HUD disagrees. The independent physical inspections, which commenced in 1998, have provided an essential tool for HUD in monitoring its public housing and multifamily portfolios and in raising the standards of operations with respect to maintaining the physical condition of public housing properties. The costs of HUD's physical and financial oversight operations amount to a little more than 0.3 percent of the Capital Fund appropriation, of which these costs are an appropriated administrative offset.

Comment: One commenter suggested that units being used for non-residential purposes, such as for community services, be exempt from the physical inspections. One commenter suggested that the site not be included as an inspectable area.

HUD Response: HUD disagrees. First, 24 CFR part 5, subpart G, requires the inspection of common areas, the site, and dwelling units. Secondly, any aspect of a project that may be used by assisted tenants should be subject to inspection, as deterioration of any portion of the project, including community rooms and common areas, affects the whole project.

Comment: One commenter suggested that HUD create a special adjustment factor due to the age of a project.

HUD Response: The currently codified PHAS regulation provides for two adjustments—physical condition and neighborhood environment (PCNE). The PCNE adjustment is based on a statutory requirement at 42 U.S.C. 1437d(j)(1)(I)(2). Under the currently codified regulation, PHAs apply for these adjustments through their management operations certification, which are calculated using information from HUD data systems applied to the physical condition score. Under this interim rule, PCNE will be applied to the management operations indicator score. Moreover, PCNE is based on: (1) Age of the property, and (2) location, which accommodates both the commenter's concern as well as HUD's statutory mandate.

Comment: Several commenters regarded the physical inspections as being too subjective, citing instances of large variations in scores (depending on the inspector), and stated that the appeals process was too cumbersome.

HUD Response: Over the past 12 years, HUD has invested significant resources to assure consistent application of established standards, including a team of HUD "quality assurance" inspectors. While always striving to continue to improve the accuracy of its inspections, HUD believes that the inspection process provides a reasonable indication of the physical condition at the time of inspection of each project. Of course, conditions can vary from year to year. Additionally, HUD has established a process of appeals. HUD is required by statute, 42 U.S.C. 1437d(j)(2)(A)(iii), to establish procedures for appealing a designation of "troubled." HUD's appeals process has been in existence since 1998. The appeals process is, in fact, quite streamlined and uses a bare minimum of procedural requirements. For example, an appeal is initiated by a simple written request.

Comment: Several commenters asked that HUD modify the method of scheduling inspections to allow more flexibility for PHAs.

HUD Response: The scheduling of inspections is part of the Reverse Auction Program that is not part of the PHAS rule. Physical inspection procedures call for adequate notice to the PHA. Inspectors are encouraged to be flexible when the PHA expresses insurmountable difficulties in meeting the inspection date. However, inspectors are not obligated to change inspection dates, and at times cannot do so because of their workload and the need to complete inspections in a timely and efficient manner. The PHAS regulations were not changed in response to this comment.

Comment: Several commenters suggested that PHAs have the option to "abate" EHS violations, rather than to correct or repair them within 24 hours.

HUD Response: HUD agrees that this is a reasonable differentiation. Consequently, this interim rule adopts the following language in § 902.22(f) on EHS deficiencies, "The project or PHA shall correct, remedy, or act to abate all EHS deficiencies cited in the deficiency report * * *."

Comment: Commenters stated that the 72-hour deadline for non-exigent health and safety deficiencies, and the 24-hour timeline for EHS, are too short. The deadline for EHS could result in a PHA having to do emergency procurement, which will increase costs.

HUD Response: EHS deficiencies are, by definition, ones that pose a danger to tenants and so must be corrected or abated quickly. Adding the option to abate the deficiencies and subsequently do a final repair gives PHAs more flexibility, which should address the expenditure issue. As for other deficiencies, the 3 days for an "A" is the average, and HUD believes that this is reasonable for a high performing PHA.

Comment: A commenter stated that § 902.26(a)(4) (triple deduction for uncorrected EHS deficiencies that the PHA had certified were corrected) is overly harsh and seems intended to dissuade PHAs from availing themselves of their right to appeal and given the subjective nature of inspections.

Response: The triple penalty referenced in this section is not related to a PHA's right to appeal; rather, it is a penalty for a false statement to HUD. In general, false statements to the government are often punished harshly in order to deter such behavior. The PHAS system relies heavily on PHAs correctly certifying information and on following through with promised repairs.

Comment: Several commenters suggested that PHAs should be able to challenge EHS deficiencies.

HUD Response: A PHA may always challenge an inspector's determination of what constitutes an EHS issue. However, such a challenge does not remove the PHA's obligation to correct or abate the deficiency within the time required by the regulation. EHS violations are scored, with the exception of smoke detectors, and, therefore, properly belong in the PHAS regulations. A PHA also has the option of requesting a technical review or submitting an appeal if the PHA believes that the inspector was in error.

Comment: Several commenters stated that it is too difficult and time consuming to obtain database adjustments and changes. Commenters stated that requiring PHAs to annually file the same requests adds another layer of bureaucracy and HUD should be required to actually make a permanent adjustment to its database for items that do not belong to the PHA. The paperwork involved in requesting a database adjustment from the HUD field office can be unnecessarily time consuming. The inspector should be given the authority to make an onsite adjustment in cases that are clearly warranted. Also, because maintenance does not automatically stop when an inspector arrives, ongoing maintenance work should not reflect negatively on a PHA's overall rating, but should be noted as an adjustment by the inspector.

HUD Response: There has been a mechanism in place since 1998 for making database adjustments. HUD notes that PHAs are required to present compelling evidence that deficient items noted in the physical inspection report are issues of ownership or code enforcement that are: (1) Outside of the PHA's property; (2) owned and maintained by another entity (such as a municipality); or (3) items normally expected to be code violations (e.g., window security bars) are permitted by the locality. These database adjustments are permanent once a PHA goes through the initial process and submits the justifying documentation, and when granted, are automatic for the next inspection. Other database adjustments, such as units undergoing comprehensive modernization, rehabilitation or conversion, are temporary. To the extent that a unit's status carries over from one inspection to the next, the temporary adjustment must be re-verified. Due to the fact that the field office is required to verify a PHA's request for a database adjustment based on a PHA's supporting documentation, the inspector cannot make an adjustment while on-site. Since the physical inspection of a unit is a snapshot in time, if maintenance work is in progress during the inspection of a unit, the physical condition of the unit is recorded in the inspection report. Accordingly the PHAS regulations have not been changed in this regard. However, to be consistent with multifamily regulations, the time frame for requesting database adjustments has been increased to 45 days.

Comment: Several commenters suggested various clarifications in the "definitions" related to physical inspections, such as project area versus building area, normalized sub-area weight, and how scattered sites are scored in the building area score calculation, project area score calculation, and property score calculation.

HUD Response: HUD has clarified the definitions related to physical inspections, as appropriate, in the physical condition scoring notice.

Comment: The physical inspection standards should be weighted more toward assuring major capital systems are not neglected.

HUD Response: The elements scored by PHAS are statutory, and related to the ongoing physical condition and management of public housing projects and PHAs as a whole. Major capital systems are addressed in the Physical Needs Assessment (PNA).

Comment: Several commenters disagreed with the use of contractors for inspection, stating that HUD field office personnel know the local communities and have an interest in improving the projects.

HUD Response: The use of contractors is within HUD's administrative discretion.

Comment: A commenter asks whether HUD is considering changing the understanding that smoke detectors do not affect the overall score.

HUD Response: No, HUD is not changing that understanding.

Financial Condition Indicator

Comment: One commenter indicated that a PHA should receive bonus points under the financial condition indicator for a "clean" independent audit. Another commenter stated that there was a conflict, in terms of timeframe for submitting audits, between the proposed rule and the Single Audit Act.

HUD Response: A clean, independent audit is a minimum acceptable performance standard for any financial entity, including PHAs. Bonus points will not be awarded simply because a PHA maintains its books and records properly. There is no conflict between the proposed rule, and now this interim rule and the requirements of the Single Audit Act, because both require the submission of a PHA's audit within 9 months of a PHA's fiscal year end. HUD can waive the submission of audited information to HUD, but it cannot waive the PHA's submission of audited information to the Federal Audit Clearinghouse, which is required by the Single Audit Act and OMB Circular A–133.

Comment: Several commenters requested greater clarification on the three scored elements, Quick Ratio (QR), Months Expendable Net Assets Ratio (MENAR), and the Debt Service Coverage Ratio (DSCR), under the financial condition indicator, whether they will only be applied to the public housing program, and whether scores will be based on audited or unaudited statements.

HUD Response: The financial condition scoring notice provides further clarification as to how the subindicators under financial condition are scored. All PHAs will receive scores on the submission of the unaudited FDS. For those PHAs that expend more than $500,000 in federal funds and where audited information is required, financial condition indicator scoring may be revised based on the audited submission. The score based on the audited information will replace the score based on the unaudited FDS because audited information is more reliable as the audit is performed by a third party that attests to the information. HUD does not agree that it should ignore the audited financial information in computing the PHAS score, because audited financial information has an assurance of reliability that is important for those PHAs where audited information is required, as a greater amount of funding is involved, and such audits are required under OMB Circular A–133. PHAs that expend less than the A–133 threshold amount, currently $500,000, are not required to have an audit performed. However, PHAs that received operating subsidy for an audit are required to have a non-A–133 audit performed. Accordingly, the PHA will select a non-A–133 audit when submitting to Financial Assessment Subsystem—Public Housing (FASS–PH).

The interim rule is clear that PHAS measures the financial condition of projects. It does not score the Central Office Cost Center (COCC), the PHA's operation of a Section 8 voucher program, any other PHA program, or a PHA's business activities.

Comment: One commenter stated there is a conflict between §§ 902.60 and 902.62 regarding the deadlines for filing financial audits, with § 902.60 implying that a 9-month deadline for audited financial statements can be deferred and § 902.62 stating that it cannot.

HUD Response: The commenter misunderstands the waiver of deadlines provision. The only deadlines that may be waived are those other than the 9-month deadline for the audited financial statement under the Single Audit Act, such as the financial statements required under 24 CFR part 5, subpart H.

Comment: Several commenters believed that the financial condition standards should be modified. Others commented that the standards for the DSCR were too high (a project would need a DSCR of 2.0 to receive full points). One commenter stated that MENAR and QR should be prorated to account for underfunding, and provided examples. One commenter questioned the fact that bad debt is removed as a separate element in this interim rule.

HUD Response: The QR and the MENAR are very similar to the Current Ratio and the Months Expendable Fund Balance that are used in the currently codified regulation, with the major change being made by this interim rule is that they are applied to public housing projects and rolled up to reflect a PHA's public housing financial activity.

The QR compares quick assets to current liabilities. Quick assets are cash, assets, receivables, and investments that are easily convertible to cash and do not include inventory. Current liabilities are those liabilities that are due within the next 12 months.

The MENAR measures a project's ability to operate using its net available, unrestricted resources without relying on additional funding. This ratio compares the adjusted net available unrestricted resources, such as cash, receivables, and investments, to the average monthly operating expenses. The result of this calculation shows how many months of operating expenses can be covered with currently available, unrestricted resources. Because MENAR is a measure of reserve adequacy, HUD views one month's reserves, a MENAR of 1.0, as a minimum adequacy for which minimal points are awarded. The greater the adequacy of reserves, the higher the MENAR, and the greater number of points awarded.

Both QR and MENAR specifically exclude Capital Fund Financing program short term liabilities from their calculations. As to underfunding, funding levels for PHAs are determined by Congress. HUD declines to "prorate" these measures. All PHAs are subject to the availability of appropriations, and PHAs that make the most efficient use of their available resources will, and should, score the most points under these indicators. As a result, the QR and the MENAR have not been changed by this interim rule.

However, HUD will consider revisions to the QR metric in the final rule subject to these guidelines. The responsible maintenance of operating reserves is a critical component of effective property management. Scoring for the QR subindicator should acknowledge the fine line between adequate and excessive reserve levels. HUD is concerned that projects that maintain excess reserves may not be providing adequate services to its residents or effective property maintenance. HUD will continue to explore ways in which the maintenance of appropriate operating reserves can be encouraged through the final PHAS rule. However, the public is advised that a different measurement tool may be used, or, if HUD retains the QR, that HUD may explore how it should be tightened to recognize that high QRs might not indicate effective property management. HUD invites the public to comment on these and other issues regarding the QR.

The DSCR is the ratio of net operating income available to make debt payments, to the amount of the debt payments. This subindicator is used if the PHA has taken on long-term obligations.

It was not the intent of Congress, in establishing section 6(j) of the 1937 Act,

42 U.S.C. 1437d(j), to make allowances for funding, because the statute makes no provision for funding allowances.

Bad debt is included in the tenant accounts receivable indicator in the Management Operations component.

HUD agrees that the standards originally proposed for DSCR were too high and has modified the scoring for DSCR such that any project with a DSCR of 1.25 or higher receives the full points. This standard conforms to Fannie Mae's Tier 2 underwriting specifications as well as Freddie Mac's affordable multifamily mortgage requirements. HUD specifically seeks public comments on this issue.

Comment: One commenter stated disagreement with the way the proposed rule would address differences between unaudited and audited financial audits by making an adjustment under § 902.64(a), in that the proposed rule used as an example a downward adjustment only. This commenter also stated that PHAs that are exempt from providing audited financial statements could be treated differently from PHAs that file both audited and unaudited statements, and that financial scores should be based entirely on the audited statements only if a PHA files both.

Response: This interim rule revises the language in § 902.64(a)(1) to simply state that scores may be adjusted in the case of significant differences. However, HUD does not agree with the commenter that unaudited results should be completely disregarded. Audited results are an important check on the accuracy of unaudited results, and if the PHA is following proper accounting practices, there should not be significant differences.

Comment: Several commenters believed that HUD should retain the "peer grouping" aspect of financial condition scoring, as exists under the currently codified regulation.

HUD Response: HUD disagrees. In its multifamily housing programs, HUD does not provide any adjustment in the financial assessment of a project because the project is owned by a "large" property owner or because the project is located in a certain area. A project is financially stable because it meets or exceeds certain basic thresholds that are generally accepted in HUD multifamily asset management. Peer grouping, as it has existed under scoring notices pursuant to the currently codified PHAS rule (an explanation of peer grouping appears in the July 17, 2006, 2006 financial condition scoring notice at 71 FR 40535, first column), was proposed to be removed in the August 21, 2008, proposed rule and is removed in this current rule as a consequence of the change to asset management. Peer grouping is based on the size of the PHA as a function of the number of units it administers, along with an adjustment for geographic location. Peer grouping, in other words, was a result of the fact that entire PHAs were being scored, and there had to be some way to account for differences among PHAs that could affect their financial score. However, now that financial scoring is being done on an individual project basis, all projects are essentially similar and judged by the same criteria and peer grouping is no longer required.

Comment: A commenter suggested that PHAs be provided with an additional 30 days to submit unaudited financial statements.

HUD Response: HUD disagrees. Although HUD provided extra time for PHAs to submit unaudited financial statements during the first year of conversion to asset management, a PHA should be able to submit unaudited statements within 2 months, as is the case under the PHAS regulations that are currently codified.

Management Operations Indicator

Comment: A number of commenters stated that there should be no onsite management assessment, stating that it is too costly or logistically difficult.

HUD Response: As noted in response to the general comments, HUD is not scoring the onsite management review, pending further study. However, given the extensive public comment on many aspects of the management review, HUD wishes to further test the management review mechanism as a diagnostic and feedback tool.

Comment: One commenter suggested that PHAs not be evaluated based on individual projects but based on the public housing program as a whole.

HUD Response: HUD disagrees. Project-based evaluation is fundamental to asset management.

Comment: Commenters stated that the management assessment scoring notice is overly complex, not streamlined, and seeks too much information. One commenter suggests removing the non-scored areas.

HUD Response: HUD has significantly reduced the scored portion of the management operations indicator in this interim rule. The management review mechanism will be further tested by HUD to record non-scored site visits by HUD field staff to public housing projects. For that use only, the review mechanism may include scored and non-scored items.

Comment: One commenter suggested that HUD retain the current management operations certification.

HUD Response: HUD disagrees. The current management operations certification does not capture data on individual projects.

Comment: Several commenters regarded the 40 points assigned to the Management Operations Indicator as disproportionally high.

HUD Response: Because HUD is not scoring the management review and is, instead, evaluating the management operations from discreet data from a project's FDS (occupancy, tenant accounts receivable, and accounts payable), at this interim rule stage, HUD has changed the scoring weights as follows:

Physical Condition—40
Financial Condition—25
Management Operations—25
Capital Fund—10

Comment: Several commenters suggested changes to the 3 elements in the management operations indicator (i.e., occupancy, tenant accounts receivable, and accounts payable) that will be scored. Commenters suggested that there are "too many variables" that can impact accounts payable, which render its measurement moot, and made various suggestions for the percentage of accounts payable indicator, including different scoring and clarification to the applicable time frame. Similar comments were received relative to rent collections (tenant accounts receivable in the interim rule). One commenter suggested that this element be scored not based on actual performance but based on efforts undertaken.

HUD Response: HUD has not made this change in the interim rule in response to these comments. HUD disagrees that there are too many variables that can impact accounts payable because all of the variables cited by the commenters are fully within the management purview of the project and/or PHA. It is a management responsibility to arrange for vendor services, monitor the work, and make payment. Such arrangements are essential to managing a multifamily real estate enterprise. A well-managed property or PHA should already be tracking accounts payable. Therefore, HUD's measurement under PHAS should not represent a burden to the PHA.

HUD disagrees with the comments on rent collection. It is a standard multifamily housing practice that performance is measured by actual collections, not by efforts initiated. HUD has not made this change at this interim rule stage.

Comment: Several commenters stated that the standard for denial of admission based on "reason to believe" that the

applicant is using illegal drugs or is abusing alcohol would be subject to legal challenge.

HUD Response: Under this interim rule, the security subindicator is no longer scored. A review of security, including denials of admission based upon standards mandated by federal law and previously promulgated HUD regulation, will still be included in protocols for public housing onsite management reviews per the requirements of 24 CFR 960.204, "Denial of admission for criminal activity or drug abuse by household members."

Comment: Several commenters stated that the proposed management operations indicator for accounts payable is redundant because the independent audit should or does capture that and other information, or that the indicator is not useful, is overly strict, or is otherwise not needed. Some commenters stated that HUD's own funding issues are the source of problems in this area.

HUD Response: The management operations subindicators being evaluated in the interim rule (occupancy, tenant accounts receivable, and accounts payable) are not subject to A–133 compliance requirements. HUD believes that the inclusion of accounts payable in the PHAS score properly reflects effective property management practices. As noted elsewhere in this preamble, the timely payment of vendor invoices is a function fully within the purview of a property's management, and that a surplus of accounts payable is generally recognized in the property management industry as a prime indicator of a potentially or actually troubled property. Further, and also noted elsewhere in this preamble, HUD does not consider funding issues relevant to scoring under this rule.

Comment: A number of commenters opposed the "appearance and market appeal" indicator, and other aspects of the management operations indicator such as whether a property looks institutional, as too subjective, duplicative of the physical inspection indicator, or both. In addition, commenters stated that criteria related to signage, graffiti, boarded up windows, window treatments, landscaping, paved surfaces, dumpsters, and trash cans, were too difficult to enforce, unfair in their application, and overly subjective. As to signage and graffiti, commenters noted that this component would not apply well in scattered-site developments. As to window treatments, commenters stated that the standard was overly intrusive and that deductions for a single damaged window treatment were unfair. Commenters stated that landscaping components were vague. Some commenters had suggestions for changes to the appearance and market appeal, window treatment, and institutional appearance components.

Comment: Commenters stated that the security component should not be scored for various reasons. Commenters stated that PHAs have no ability to police crime; that it would be burdensome on police agencies to generate the required statistics; that the component cannot be scored in scattered site developments; and that the standards used are overly subjective. Some commenters state that since PHA developments are often sited in high-crime areas, they should be scored on programs they have implemented to prevent crime and not on results, or on matters within the control of the PHA.

HUD Response: These components will be subject to further consideration to create strong and appropriate policies in this area and the capability to measure efforts in ensuring a safe environment for public housing residents. Through this interim rule, HUD solicits additional public comments on the security component and whether appearance measures are appropriate and, if so, how they can best be measured.

Comment: Commenters stated that the applicant screening component should not apply, stating that scoring this element would place an undue burden on the PHA, or sought clarification on how it is scored. One commenter stated that because it is a statutory requirement it should not be scored.

Comment: A number of commenters stated that the proposed rule improperly handles work order turnaround time. Many commenters stated that the 3-day turnaround time to receive an A grade is unrealistically short. Commenters stated that the rule improperly prioritized tenant-generated work orders, which are not always the most urgent. Commenters stated that the rule did not take into account that small PHAs might not have the necessary staff to meet the required deadlines. Commenters stated that work order turnaround might be at the expense of long-term maintenance items, and that the relative scoring between the two items should be adjusted. Commenters stated that funding and staffing reduction should be taken into account. Commenters suggested various less stringent scoring guidelines for work order turnaround. Commenters stated that measuring improvement over time in the work order component could be difficult because it is a new standard and PHAs will not have data, and it is unclear what the consequences would be if there were a minor reduction in turnaround time, for instance, from 2 to 3 days.

Comment: A number of commenters stated that the scoring standards vacancy rate and vacancy turnaround times were too stringent and suggested various revisions, arguing that there are factors outside the PHA's control, too many points were assigned, and more strict than in the private sector. As to vacancy turnaround time, one commenter stated that small PHAs would have particular issues meeting the standard as well as other maintenance obligations.

Comment: Several commenters stated that economic self-sufficiency should not be scored, because it is outside a PHA's control, there is no funding or staffing allocated to self-sufficiency, it is not a program requirement, it is a social service function not appropriate for PHAs, and including the standard may cause PHAs to favor higher-income tenants or impose work requirements. Some commenters suggested for changes to the self-sufficiency component, including aligning the standard with the Section 8 Management Assessment Program (SEMAP) and using the component only for bonus points.

Comment: One commenter stated that the management operations assessment should include a component to assess civil rights compliance with respect to admissions, occupancy, accessibility, and other civil rights-related program requirements.

Comment: Several commenters stated that the energy conservation and utility consumption component should not be scored, because of funding issues, vagueness in the standard, or timing issues involving the required energy audit.

Comment: Several commenters stated that the preventive maintenance component should be removed.

Comment: One commenter stated that the unit inspections component should be revised to allow for alternative inspection protocols.

Comment: Several commenters stated that the time provided for clearance of prior management findings in the proposed rule is too short.

HUD Response: HUD agrees that the management review, as proposed, contains a number of subjective elements. In response to public concerns, and to provide both PHAs and HUD more time to develop and implement a more objective management review tool, the interim rule provides that the management review will be used as a diagnostic and feedback tool and not scored.

Comment: One commenter stated that the standard for corrected EHS deficiencies should be included in the management review and scored; one commenter asked why this element is not scored and more subjective elements such as market appeal are.

Comment: Two commenters stated that the adjustment for physical condition and neighborhood environment is more appropriate for the physical indicator. Several commenters stated that the point adjustment is too small to give relief for viable older properties. Other commenters stated that different or tiered property ages should qualify for the adjustment, and that the use of census tracts does not necessarily reflect the neighborhood.

HUD Response: Correction and abatement of EHS deficiencies is scored under the Physical Condition Indicator. As noted above, HUD has decided not to score the management review at this time but to use it as a diagnostic and feedback tool.

Comment: One commenter stated that items that are not scored should be removed from PHAS, including lead paint abatement, occupancy review, management review findings, other prior review findings, budget management, EHS correction, and insurance.

Comment: Commenters requested clarification of a number of specific management review items, including: modernization; resident involvement; reduced vacancy rate during the previous 3 years; the definition of average number of days that tenant-generated work orders remain open; adequate tracking systems; and the scoring under various specific Management Assessment Subsystem (MASS) components. Some commenters noted that compliance with the resident involvement requirement could differ depending on when the review is conducted.

Comment: Several commenters stated that the rule, specifically the Management Operations scoring notice, should be revised to allow force account labor.

HUD Response: As noted above, HUD has withdrawn the management review as a source of PHAS scoring. All of the issues mentioned in these comments are no longer proposed for PHAS scoring. However, HUD has taken the commentary regarding the utility of the management review itself into consideration. The current MASS protocol is removed by the interim rule.

Removal of the Resident Satisfaction Survey

Comment: The vast majority of commenters supported HUD's removal of the Resident Satisfaction Survey, stating that it does not have statistical validity or is otherwise inaccurate and unhelpful. One commenter, while not supporting the removal of the survey entirely, supported exploring alternatives, and made a number of suggestions, including utilizing Resident Advisory Boards (RABs) to obtain feedback, and sending to RABs and residents councils the results of the management review; having PHAs explain what uses are being made of resident participation funding provided by HUD; having HUD hold meetings with residents and staff; and allowing for a public comment period at PHA board meetings. Also, HUD could make the current survey available in PHA common areas, develop complaint forms, and create an ombudsman position to assist residents and resident councils. One commenter stated that it would be more realistic for an onsite management review team to ask residents the survey questions directly.

Response: HUD's experience is that the Resident Satisfaction Survey does not have a sufficient completion rate overall to be useful. HUD agrees that resident input into the assessment process is important. Notwithstanding the removal of the resident satisfaction component for the period during which this interim rule will be in effect, HUD is committed to exploring resident satisfaction, self-sufficiency, and participation measures in the final rule. Accordingly, HUD seeks comments from the public on better methods of measuring resident satisfaction, self-sufficiency, and participation.

Capital Fund Program Indicator

Comment: One commenter indicated that the Capital Fund program indicator was unnecessary.

HUD Response: This indicator is statutory and imposes no reporting burden on PHAs because the information is already captured in eLOCCS and the PIC.

Comment: One commenter requested clarification as to how Capital Fund Financing Program (CFFP) debt service payments would affect the Capital Fund program indicator.

HUD Response: The Capital Fund program indicator measures obligations of Capital Fund program grants. CFFP amounts are treated as "obligated" upon approval and closing of the financing.

Comment: One commenter suggested that the Capital Fund program indicator be revised to reflect more than just the obligation and expenditure rates under the Capital Fund program.

HUD Response: HUD agrees with this comment, and this interim rule revises the Capital Fund indicator in order to measure the use of the Capital Fund for modernization and other capital needs. HUD believes that success in addressing capital needs will be reflected in higher occupancy rates, and this interim rule measures Capital Fund in terms of timely obligation, as proposed, and adds a new component tied to occupancy rate.

Comment: One commenter suggested that the threshold for meeting the timeliness of obligation and expenditure rates be revised.

HUD Response: The threshold for the obligation subindicator has not changed. The interim rule reflects the timeline for obligation of funds that is stated in the 1937 Act. However, expenditure of Capital Funds is not necessarily a good measure of how well the funds are being used for capital expenditures, and this interim rule revises the indicator to consider occupancy as well.

Comment: Several comments identified technical errors creating apparent inconsistencies regarding project versus whole PHA scoring or the need for clarifications regarding the scoring of the Capital Fund program.

HUD Response: Both the interim rule and the Capital Fund scoring notice have been clarified to reflect HUD's intention to score Capital Fund program indicator activity only at the PHA level.

Comment: Several commenters suggested changes in the method of determining Capital Fund program bonus funds.

HUD Response: Currently, HUD awards Capital Fund program bonus funds according to a PHA's PHAS scores. HUD does not see a reason to modify this procedure.

Substantial Default

Comment: One commenter suggested that the PHAS regulations could be simplified by allowing HUD to declare a substantial default on its own prerogative without regard to regulatory criteria.

HUD Response: Sections 6(j)(3) and (4) of the 1937 Act specifically address the events or conditions that constitute substantial default by a PHA. Part 907 (24 CFR part 907) codifies those statutory requirements.

PHAS Scoring and Audit Reviews

Comment: One commenter states that it is unclear what the "appropriate sanctions" are under § 902.62(a); and for large housing authorities with large

numbers of AMPs because collecting the data is a large burden.

HUD Response: The interim rule in § 902.62(a) clearly states the appropriate sanction is one (1) PHAS point for each 15 days the data submission is delinquent. Large housing authorities have many years of experience in aggregating data from their sites and at least 2 years of experience so far with collecting project level data under asset management. Accordingly, the interim rule has not changed the PHAS regulations as requested by the commenter.

In addition, late points and late presumptive failure will only be applied to the financial condition indicator. This limitation is because the management operations information is derived from the financial condition submission, and applying penalties for lateness under both indicators would penalize PHAs twice for the same action.

Comment: One commenter stated that § 902.64(a)(2) allows HUD to change a PHAS score based on the audit report, other actions such as investigations by HUD's Office of Fair Housing and Equal Opportunity (FHEO) or Office of Inspector General (OIG), or reinspection by HUD. This commenter stated that arbitrarily changing a PHAS score is not appropriate and the regulations should not allow HUD to take this action. Another commenter stated that the "significant difference" between the audited and unaudited results and the amount of downward adjustment need to be defined.

HUD Response: Because the audit report is the PHA's submission to HUD, the fact that it may yield different scoring results than the unaudited FDS is a proper outcome. HUD notes that adjustments due to the audited statement may be adjusted either upward or downward, and a management operations score can change as a result of the audited submission since the management operations information is derived from the financial condition submission. HUD reserves the right to alter PHAS scores when instances of bona fide non-compliance, for items otherwise subject to routine PHAS scoring mechanisms, are revealed by the OIG or FHEO.

In addition, if a PHA does not submit its unaudited or audited information, it will receive a zero for management operations.

The significant difference between the unaudited and audited financial submissions is defined in the Financial Condition Scoring Notice.

Comment: Some commenters stated that the rule should allow for more upward scoring adjustments and do more to incentivize high scores.

HUD Response: HUD has incentivized PASS physical inspection scores (see above). The higher the project's PASS score, the less frequently HUD inspects the property. As with the prior PHAS rule, high performers are eligible for the Capital Fund bonus.

Comment: Several commenters objected to the removal of the board of review and recommended its reinstatement.

HUD Response: HUD finds that the mechanisms for technical reviews, database adjustments and appeals provide sufficient recourse to a PHA, where there are issues of record or fact in dispute, that there is no longer a need for a board of review. The interim rule has not changed the PHAS regulations as requested by the commenters.

Comment: A commenter suggested that the "substandard" performance designation should be appealable and that a time limit should be placed on HUD's review of appeals.

HUD Response: A PHA can appeal its PHAS scores, as well as a designation as substandard. HUD's position is that a time limit for the review of appeals may be counterproductive to ensuring adequate review of an appeal since the underlying circumstances involved in the matter of the appeal can vary greatly. The interim rule did not change the PHAS regulations as requested by the commenters.

Comment: One commenter suggested that § 902.62(a)(3) should be revised to reflect that a PHA may have received a waiver from HUD under § 902.60(c), and the PHA's due date for submission of its audited financial information may, therefore, be other than 9 months after the PHA's fiscal year-end.

HUD Response: HUD will not penalize a PHA that has received a waiver under § 902.60(c), for submitting its audited financial statement in accordance with the provisions of the waiver. HUD can waive the submission of an audited statement to HUD, but it cannot waive the PHA's submission of an audited statement to the Federal Audit Clearinghouse pursuant to OMB Circular A–133. The interim rule has not changed the PHAS regulations as requested by the commenters.

Comment: Several commenters objected to: (1) The limited circumstances under which a PHA can request a technical review of the physical inspection; and (2) limiting appeals only to those that would materially affect the physical condition and PHAS scores.

HUD Response: The technical review and appeals procedures in the interim rule are the same procedures that have been in effect since the issuance of the PHAS regulations currently codified. The interim rule has not changed the PHAS regulations as requested by the commenters.

PHAs With Deficiencies

Comment: Several commenters suggested that corrective action plans be restricted to substandard performers and that HUD should give a PHA the option not to deal with substandard housing.

HUD Response: The operation of decent, safe, and sanitary housing is the core of HUD's monitoring obligations under its grant contracts with PHAs. To suggest otherwise, especially that a PHA not address substandard housing, is unacceptable to HUD. PHAs have a statutory obligation to provide decent, safe, and sanitary housing and will be held responsible for failure to meet this obligation. The changes to the PHAS regulations proposed by the August 21, 2008, proposed rule and adopted by this interim rule are designed to better evaluate whether this core responsibility is met by PHAS. Finally, there are and will continue to be circumstances where deficiencies are noted, but are not sufficient to declare a PHA troubled or substandard. In such cases, the development of a corrective action plan may be in order. The interim rule has not changed the PHAS regulations as requested by the commenters.

Troubled Performers

Comment: One commenter stated that HUD should increase the time for a PHA to review and accept a memorandum of agreement (MOA) and that the substantial improvement measure under § 902.75(g) be tied to the MOA. This commenter stated that the current timeline does not provide enough time for meaningful resident participation.

HUD Response: This interim rule at § 902.75(c) provides that HUD may extend both PHA review and acceptance time upon PHA request. Since the MOA is designed to remedy a troubled PHA, its substantial improvement measures are tied properly to the PHA's PHAS evaluation. In addition, the criteria for substantial improvement are statutory. Further, ensuring meaningful resident participation is wholly within the purview and control of the PHA. As noted above, the PHA may request additional time to effect an MOA. HUD has not changed the interim rule to reflect these comments.

V. Solicitation of Additional Comment

HUD generally publishes rules for advance public comment in accordance

with its rules on rulemaking at 24 CFR part 10. However, under 24 CFR 10.1, HUD may omit prior public notice and comment if it is "impracticable, unnecessary, or contrary to the public interest." Since HUD recently published a proposed rule on this subject on which it received extensive public comment, advance public comment on this interim rule is unnecessary. While HUD recognizes the concerns expressed by many commenters about incorporating the management review into the PHAS scoring until such matters as subjectivity, capacity, and training can be more fully developed, it is necessary to provide an interim mechanism for scoring PHAs. Therefore, HUD is issuing this interim rule. Because of the importance and complexity of the issues involved, HUD is also providing additional opportunity for public comment while also establishing an interim mechanism for scoring. The preamble to this interim rule, where appropriate, states several specific issues upon which HUD seeks comment.

VI. Findings and Certifications

Paperwork Reduction Act

The information collection requirements have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and have been approved under OMB Control Numbers 2577–0237, 2535–0106, 2502–0369, and 2535–0107. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Regulatory Planning and Review

OMB reviewed this rule under Executive Order 12866, *Regulatory Planning and Review.* This rule was determined to be a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–402–3055 (this is not a toll-free number).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule will not impose any Federal mandates on any state, local, or tribal governments or the private sector within the meaning of UMRA.

Environmental Review

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). That Finding remains applicable to this interim rule and is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the Finding by calling the Regulations Division at 202–402–3055 (this is not a toll-free number).

Impact on Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule revises HUD's existing PHAS regulations for the assessment of public housing at 24 CFR part 902, to revise the PHAS regulations to elaborate upon certain procedures, to conform the PHAS regulations to current public housing operations, and to conform to certain statutory changes. These revisions impose no significant economic impact on a substantial number of small entities. PHAs in general have been assessed under PHAS for several years, and this rule imposes no additional burdens; rather, it removes the onsite management review, further lessening the compliance burdens on all PHAs. Further, small PHAs (PHAs with under 250 units) are assessed on a less frequent schedule than larger ones. While some commenters on the August 21, 2008, proposed rule argued for even further lessening of the burdens on small PHAs, there were no commenters that suggested that the proposed rule violated regulatory flexibility principles. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This interim rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt State law within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the Public Housing program is 14.850.

List of Subjects

24 CFR Part 901

Administrative practice and procedures, public housing, reporting and recordkeeping requirements.

24 CFR Part 902

Administrative practice and procedures, public housing, reporting and recordkeeping requirements.

24 CFR Part 907

Administrative practice and procedures, public housing, reporting and recordkeeping requirements.

Accordingly, HUD amends 24 CFR Chapter IX, as follows:

PART 901—[REMOVED AND RESERVED]

■ 1. Under the authority of 42 U.S.C. 1436d(j), remove and reserve 24 CFR part 901.

■ 2. Revise 24 CFR part 902 to read as follows:

PART 902—PUBLIC HOUSING ASSESSMENT SYSTEM

Subpart A—General Provisions

Sec.

Authority: 42 U.S.C. 1437d(j), 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 902.1 Purpose, scope, and general matters.

(a) *Purpose.* The purpose of the Public Housing Assessment System (PHAS) is to improve the delivery of services in public housing and enhance trust in the public housing system among public housing agencies (PHAs), public housing residents, and the general public, by providing a management tool for effectively and fairly measuring the performance of a PHA in essential housing operations of projects, on a program-wide basis and individual project basis, and providing rewards for high performers and remedial requirements for poor performers.

(b) *Scope.* PHAS is a strategic measure of the essential housing operations of projects and PHAs. PHAS does not evaluate the compliance of a project or PHA with every HUD-wide or program-specific requirement or objective. Although not specifically evaluated through PHAS, PHAs are responsible for complying with nondiscrimination and equal opportunity requirements, including but not limited to those specified in 24 CFR 5.105, for affirmatively furthering fair housing, requirements under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and requirements of other federal programs under which the PHA is receiving assistance. A PHA's adherence to these requirements will be monitored in accordance with the applicable program regulations and the PHA's Annual Contributions Contract (ACC).

(c) *PHAS indicators.* HUD will assess and score the performance of projects and PHAs based on the indicators, which are more fully addressed in § 902.9: Physical condition, financial condition, management operations, and the Capital Fund program.

(d) *Assessment tools.* HUD will make use of uniform and objective criteria for the physical inspection of projects and PHAs and the financial assessment of projects and PHAs, and will use data from appropriate agency data systems to assess management operations. For the Capital Fund program indicator, HUD will use information provided in the electronic Line of Credit Control System (eLOCCS), the Public Housing Information Center (PIC), or their successor systems. On the basis of this data, HUD will assess and score the results, advise PHAs of their scores, and identify low-scoring and poor-performing projects and PHAs so that these projects and PHAs will receive the appropriate attention and assistance.

(e) *Small PHAs.* A PHA with fewer than 250 units that does not convert to asset management will be considered as one project by HUD.

(f) HUD's s*coring procedures* will be published from time to time in the **Federal Register** for public comment.

§ 902.3 Definitions.

As used in this part:

Act means the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*)

Alternative management entity (AME) is a receiver, private contractor, private manager, or any other entity that is under contract with a PHA, under a management agreement with a PHA, or that is otherwise duly appointed or contracted (for example, by court order or agency action), to manage all or part of a PHA's operations.

Assessed fiscal year is the PHA fiscal year that has been/is being assessed under PHAS.

Assistant Secretary means the Assistant Secretary for Public and Indian Housing.

Capital Fund-troubled refers to a PHA that does not meet the minimum passing score of 5 points or 50 percent under the Capital Fund indicator.

Corrective Action Plan means a plan, as provided in § 902.73(a), that is developed by a PHA that specifies the actions to be taken, including timetables, that shall be required to correct deficiencies identified under any of the PHAS indicators and subindicators, and identified as a result of a PHAS assessment, when a memorandum of agreement (MOA) is not required.

Criticality means one of five levels that reflect the relative importance of the deficiencies for an inspectable item.

(1) Based on the importance of the deficiency, reflected in its criticality value, points are deducted from the score for an inspectable area.

Criticality	Level
Critical	5
Very Important	4
Important	3
Contributes	2
Slight Contribution	1

(2) The Item Weights and Criticality Levels document lists all deficiencies with their designated levels, which vary from 1 to 5, with 5 as the most critical, and the point values assigned to them.

Days mean calendar days, unless otherwise specified.

Decent, safe, sanitary housing and in good repair (DSS/GR) is HUD's standard for acceptable basic housing conditions and the level to which a PHA is required to maintain its public housing.

Deficiency means any finding or determination that requires corrective action, or any score below 60 percent of the available points for the physical condition, financial condition, or management operations indicators, and any score below 50 percent for the Capital Fund indicator. In the context of physical condition and physical inspection in subpart B of this part, "deficiency" means a specific problem, as described in the Dictionary of Deficiency Definitions, such as a hole in a wall or a damaged refrigerator in the kitchen that can be recorded for inspectable items.

Dictionary of Deficiency Definitions means the Dictionary of Deficiency Definitions document that is utilized in the PHAS Physical Condition Scoring procedure, and which contains specific definitions of each severity level for deficiencies under this subpart.

Direct Funded RMC (DF–RMC) means a Resident Management Corporation to which HUD directly provides operating and capital assistance under the provisions of 24 CFR 964.225(h).

Inspectable areas (or area) mean any of the five major components of public housing that are inspected, which are: Site, building exteriors, building systems, dwelling units, and common areas.

Inspectable item means the individual parts, such as walls, kitchens, bathrooms, and other things, to be inspected in an inspectable area. The number of inspectable items varies for each area. Weights are assigned to each item as shown in the Item Weights and Criticality Levels document.

Item Weights and Criticality Levels document means the Item Weights and Criticality Levels document that is utilized in the Physical Condition scoring procedure, and which contains a listing of the inspectable items, item weights, observable deficiencies, criticality levels and values, and severity levels and values that apply to this subpart.

Memorandum of Agreement (MOA) is defined in § 902.75(b).

Normalized weights mean weights adjusted to reflect the inspectable items or areas that are present to be inspected.

Resident Management Corporation (RMC) is defined in 24 CFR 964.7.

Score for a project under the physical condition inspection means a number on a scale of 0 to 100 that reflects the physical condition of a project, inspectable area, or subarea. To record a health or safety deficiency, a specific designation (such as a letter—a, b, or c) is added to the project score that highlights that a health or safety deficiency (or deficiencies) exists. If smoke detectors are noted as inoperable or missing, another designation (such as an asterisk (*)) is added to the project score. Although inoperable or missing smoke detectors do not reduce the score, they are fire safety hazards and are included in the Notification of Exigent and Fire Safety Hazards Observed Deficiency list that the inspector gives the PHA's project representative.

Severity under the physical condition inspection means one of three levels, level 1 (minor), level 2 (major), and level 3 (severe), that reflect the extent of the damage or problem associated with each deficiency. The Item Weights and Criticality Levels document shows the severity levels for each deficiency. Based on the severity of each deficiency, the score is reduced. Points deducted are calculated as the product of the item weight and the values for criticality and severity. For specific definitions of each severity level, see the Dictionary of Deficiency Definitions.

Statistically valid sample refers to a scientific sampling performed in a rigorous, random manner.

Subarea means an inspectable area for one building. For example, if a project has more than one building, each inspectable area for each building in the project is treated as a subarea.

Unit-weighted average means the average of the PHA's individual indicator scores, weighted by the number of units in each project, divided by the total number of units in all of the projects of the PHA. In order to compute a unit-weighted average, an individual project score for a particular indicator is multiplied by the number of units in each project to determine a "weighted value." For example, for a PHA with two projects, one with 200 units and a score of 90, and the other with 100 units and a score of 60, the unit-weighted average score for the indicator would be $(200 \times 90 + 100 \times 60)/300 = 80$.

§ 902.5 Applicability.

(a) *PHAs, RMCs, AMEs.* This part applies to PHAs, Resident Management Corporations (RMCs), and AMEs. This part is also applicable to RMCs that receive direct funding from HUD in accordance with section 20 of the 1937 Act (DF–RMCs).

(1) *Scoring of RMCs and AMEs.* (i) RMCs and DF–RMCs will be assessed and issued their own numeric scores under PHAS based on the public housing or portions of public housing that they manage and the responsibilities they assume that can be scored under PHAS. References in this part to PHAs include RMCs, unless stated otherwise. References in this part to RMCs include DF–RMCs, unless stated otherwise.

(ii) AMEs are not issued PHAS scores. The performance of the AME contributes to the PHAS score of the project(s)/PHA(s) for which they assumed management responsibilities.

(2) *ACC.* The ACC makes a PHA legally responsible for all public housing operations, except where DF–RMC assumes management operations.

(i) Because the PHA and not the RMC or AME is ultimately responsible to HUD under the ACC, the PHAS score of a PHA will be based on all of the projects covered by the ACC, including those with management operations assumed by an RMC or AME (including a court-ordered or administrative receivership agreement, if applicable).

(ii) A PHA's PHAS score will not be based on projects managed by a DF–RMC.

(3) This part does not apply to Moving-to-Work (MTW) agencies that are specifically exempted in their grant agreement.

(b) *Implementation of PHAS.* The regulations in this part are applicable to PHAs beginning with the first fiscal year end date after the effective date of this rule, and thereafter.

§ 902.9 PHAS scoring.

(a) *Indicators and subindicators.* Each PHA will receive an overall PHAS score, rounded to the nearest whole number, based on the four indicators: Physical condition, financial condition, management operations, and the Capital Fund program. Each of these indicators contains subindicators, and the scores for the subindicators are used to determine a single score for each of these PHAS indicators. Individual project scores are used to determine a single score for the physical condition, financial condition, and management operations indicators. The Capital Fund program indicator score is entity-wide.

(b) *Overall PHAS score and indicators.* The overall PHAS score is derived from a weighted average of score values for the four indicators, as follows:

(1) The physical condition indicator is weighted 40 percent (40 points) of the overall PHAS score. The score for this indicator is obtained as indicated in subpart B of this part.

(2) The financial condition indicator is weighted 25 percent (25 points) of the overall PHAS score. The score for this indicator is obtained as indicated in subpart C of this part.

(3) The management operations indicator is weighted 25 percent (25 points) of the overall PHAS score. The score for this indicator is obtained as indicated in subpart D of this part.

(4) The Capital Fund program indicator is weighted 10 percent (10 points) of the overall PHAS score for all Capital Fund program grants for which fund balances remain during the assessed fiscal year. The score for this indicator is obtained as indicated in subpart E of this part.

§ 902.11 PHAS performance designation.

All PHAs that receive a PHAS assessment shall receive a performance designation. The performance designation is based on the overall PHAS score and the four indicator scores, as set forth below.

(a) *High performer.* (1) A PHA that achieves a score of at least 60 percent of the points available under the financial condition, physical condition, and management operations indicators and at least 50 percent of the points available under the Capital Fund indicator, and achieves an overall PHAS score of 90 percent or greater of the total available points under PHAS shall be designated a high performer. A PHA shall not be designated a high performer if it scores below the threshold established for any indicator.

(2) High performers will be afforded incentives that include relief from reporting and other requirements, as described in § 902.71.

(b) *Standard performer.* (1) A PHA that is not a high performer shall be designated a standard performer if the PHA achieves an overall PHAS score of at least 60 percent, and at least 60 percent of the available points for the physical condition, financial condition, and management operations indicators, and at least 50 percent of the available points for the Capital Fund indicator.

(2) At HUD's discretion, a standard performer may be required by the field office to submit and operate under a Corrective Action Plan.

(c) *Substandard performer.* A PHA shall be designated a substandard performer if the PHA achieves a total PHAS score of at least 60 percent and achieves a score of less than 60 percent under one or more of the physical condition, financial condition, or management operations indicators. The PHA shall be designated as substandard physical, substandard financial, or substandard management, respectively. The HUD office with jurisdiction over the PHA shall require a Corrective Action Plan if the deficiencies have not already been addressed in a current Corrective Action Plan.

(d) *Troubled performer.* (1) A PHA that achieves an overall PHAS score of less than 60 percent shall be designated as a troubled performer.

(2) In accordance with section 6(j)(2)(A)(i) of the Act (42 U.S.C. 1437d(j)(2)(A)(i)), a PHA that receives less than 50 percent under the Capital Fund program indicator under subpart E of this part will be designated as a troubled performer and subject to the sanctions provided in section 6(j)(4) of the Act (42 U.S.C. 1437(d)(j)(4)).

§ 902.13 Frequency of PHAS assessments.

The frequency of a PHA's PHAS assessments is determined by the size of the PHA's Low-Rent program and its PHAS designation. HUD may, due to unforeseen circumstances or other cause as determined by HUD, extend the time between assessments by direct notice to the PHA and relevant resident organization or resident management entity, and any other general notice that HUD deems appropriate.

(a) *Small PHAs.* HUD will assess and score the performance of a PHA with fewer than 250 public housing units, as follows:

(1) A small PHA that is a high performer may receive a PHAS assessment every 3 years;

(2) A small PHA that is a standard or substandard performer may receive a PHAS assessment every other year; and

(3) All other small PHAs may receive a PHAS assessment every year, including a PHA that is designated as troubled or Capital Fund-troubled in accordance with § 902.75.

(b) *Frequency of scoring for PHAs with 250 units or more.*

(1) All PHAs, other than stated in paragraph (a) of this section, may be assessed on an annual basis.

(2) The physical condition score for each project will determine the frequency of inspections of each project. For projects with a physical condition score of 90 points or higher, physical inspections will be conducted every 3 years at the project. For projects with a physical condition score of less than 90 points but at least 80 points, physical inspection will be conducted every 2 years at the project. The physical condition score of 80 points or higher will be carried over to the next assessment period and averaged with the other project physical condition score(s) for the next assessment year for an overall PHAS physical condition indicator score. For projects whose physical condition score for a project is less than 80 points, physical inspections will be conducted annually at the project.

(3) If a PHA is designated as a troubled performer, all projects will receive a physical condition inspection regardless of the individual project physical condition score.

(4) In the baseline year, every PHA will receive an overall PHAS score and in all four of the PHAS indicators: Physical condition; financial condition; management operations; and Capital Fund program. This will allow a baseline for the physical condition inspections and the 3–2–1 inspection schedule, as well as a baseline year for the small deregulated PHAs.

(c) *Financial submissions.* HUD shall not issue a PHAS score for the unaudited and audited financial information in the years that a PHA is not being assessed under PHAS. Although HUD shall not issue a PHAS score under such circumstances, a PHA shall comply with the requirements for submission of annual unaudited and audited financial statements in accordance with subpart C of this part and 24 CFR 5.801.

Subpart B—Physical Condition Indicator

§ 902.20 Physical condition assessment.

(a) *Objective.* The objective of the physical condition indicator is to determine whether a PHA is meeting the standard of decent, safe, sanitary housing in good repair (DSS/GR), as this standard is defined in 24 CFR 5.703.

(b) *Method of assessment.* The physical condition assessment is based on an independent physical inspection of a PHA's projects provided by HUD and performed by contract inspectors, and conducted using HUD's Uniform Physical Condition Standards (UPCS) under 24 CFR part 5, subpart G.

(c) *Method of transmission.* After the inspection is completed, the inspector transmits the results to HUD, where the results are verified for accuracy and then scored in accordance with the procedures in this subpart B.

(d) *PHA physical inspection requirements.* The physical inspections conducted under this part do not relieve the PHA of the responsibility to inspect public housing units, as provided in section 6(f)(3) of the Act (42 U.S.C. 1437d(f)(3)).

(e) *Compliance with state and local codes.* The physical condition standards in this part do not supersede or preempt state and local building and maintenance codes with which the PHA's public housing must comply. PHAs must continue to adhere to these codes.

(f) *HUD access to PHA projects.* All PHAs are required by the ACC to provide HUD or its representative with full and free access to all facilities in its projects. All PHAs are required to provide HUD or its representative with access to its projects and to all units and appurtenances in order to permit physical inspections, monitoring reviews, and quality assurance reviews under this part. Access to the units shall be provided whether or not the resident is home or has installed additional locks for which the PHA did not obtain keys. In the event that the PHA fails to provide access as required by HUD or its representative, the PHA shall be given a physical condition score of zero for the project or projects involved. This score of zero shall be used to calculate the physical condition indicator score and the overall PHAS score.

§ 902.21 Physical condition standards for public housing—decent, safe, and sanitary housing in good repair (DSS/GR).

(a) *General.* Public housing must be maintained in a manner that meets the physical condition standards set forth in this part in order to be considered DSS/GR (standards that constitute acceptable basic housing conditions). These standards address the major physical areas of public housing: Site, building exterior, building systems, dwelling units, and common areas (see paragraph (b) of this section). These standards also identify health and safety considerations (see paragraph (c) of this section). These standards address acceptable basic housing conditions, not the adornment, décor, or other cosmetic appearance of the housing.

(b) *Major inspectable areas.* (1) *Site.* The site includes the components and must meet the requirements of 24 CFR 5.703(a).

(2) *Building exterior.* The building exterior includes the components and must meet the standards stated in 24 CFR 5.703(b).

(3) *Building systems.* The building's systems include components such as domestic water, electrical system, elevators, emergency power, fire protection, heating/ventilation/air conditioning (HVAC), and sanitary system. Each building's systems must meet the standards of 24 CFR 5.703(c).

(4) *Dwelling units.* Each dwelling unit within a building must meet the standards of 24 CFR 5.703(d).

(5) *Common areas.* Each common area must meet the standards of 24 CFR 5.703(e).

(c) *Health and safety concerns.* All areas and components of the housing must be free of health and safety hazards, as provided in 24 CFR 5.703(f).

§ 902.22 Physical inspection of PHA projects.

(a) *The inspection, generally.* The PHA's score for the physical condition indicator is based on an independent physical inspection of a PHA's project(s) provided by HUD and using HUD's Uniform Physical Condition Standard (UPCS) inspection protocols to ensure projects meet DSS/GR standards that constitute acceptable basic housing conditions. Mixed-finance projects will be subject to the physical condition inspections.

(b) Pursuant to § 902.13(a), PHAs with less than 250 public housing units will receive a PHAS assessment, based on their PHAS designation, as follows:

(1) A small PHA that is a high performer will receive a PHAS assessment every 3 years;

(2) A small PHA that is a standard or substandard performer will receive a PHAS assessment every other year; and

(3) All other small PHAs will receive a PHAS assessment every year, including a PHA that is designated as troubled or Capital Fund-troubled in accordance with § 902.75.

(c) In the baseline year, every PHA will receive an overall PHAS score and in all four of the PHAS indicators: Physical condition; financial condition; management operations; and Capital Fund program. This will allow a baseline score to be established for the physical condition inspections and the 3–2–1 inspection schedule, as well as a baseline year for the small deregulated PHAs.

(d) *Physical inspection under the PHAS physical condition indicator.* (1) To achieve the objective of paragraph (a) of this section, HUD will provide for an independent physical inspection of a PHA's project(s) that includes, at a minimum, a statistically valid sample of the units in the PHA's projects, to determine the extent of compliance with the DSS/GR standard.

(2) Only occupied units will be inspected as dwelling units (except units approved by HUD for nondwelling purposes, *e.g.,* daycare or meeting rooms, which are inspected as common areas). Vacant units that are not under lease at the time of the physical inspection will not be inspected. The categories of vacant units not under lease that are exempted from physical inspection are as follows:

(i) Units undergoing vacant unit turnaround—vacant units that are in the routine process of turnover; *i.e.,* the period between which one resident has vacated a unit and a new lease takes effect;

(ii) Units undergoing rehabilitation—vacant units that have substantial rehabilitation needs already identified, and there is an approved implementation plan to address the identified rehabilitation needs and the plan is fully funded;

(iii) Offline units—vacant units that have repair requirements such that the units cannot be occupied in a normal period of time (considered to be between 5 and 7 days) and which are not included under an approved rehabilitation plan.

(e) *Observed deficiencies.* During the physical inspection of a project, an inspector looks for deficiencies for each inspectable item within the inspectable areas, such as holes (deficiencies) in the walls (item) of a dwelling unit (area). The dwelling units inspected in a project are a randomly selected, statistically valid sample of the units in the project, excluding vacant units not under lease at the time of the physical inspection, as provided in paragraph (d)(2) of this section.

(f) *Exigent health and safety (EHS) deficiencies and health and safety (H&S) deficiencies.* (1) *EHS deficiencies.* To ensure prompt correction of EHS deficiencies, before leaving the site the inspector gives the project representative a Notification of Exigent and Fire Safety Hazards Observed form that calls for immediate attention or remedy. The project representative acknowledges receipt of the deficiency report by signature. The project or PHA shall correct, remedy, or act to abate all EHS deficiencies cited in the deficiency report within 24 contiguous hours of the project representative's receipt of the Notification of Exigent and Fire Safety Hazards Observed form. In addition, the project or PHA must certify to HUD within 3 business days of the project representative's receipt of the Notification of Exigent and Fire Safety Hazards Observed form that all EHS deficiencies were corrected, remedied, or acted upon to abate within 24 continuous hours.

(2) *H&S deficiencies.* The project or the PHA, or both, as appropriate, is required to expeditiously correct, remedy, or act to abate all H&S deficiencies after receipt of the Physical Inspection Report.

(g) *Compliance with civil rights/nondiscrimination requirements.* Elements related to accessibility will be reviewed during the physical inspection to determine possible indications of noncompliance with the Fair Housing Act (42 U.S.C. 3601–3619) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). A PHA will not be scored on those elements. Any indication of possible noncompliance will be referred to HUD's Office of Fair Housing and Equal Opportunity.

§ 902.24 Database adjustment.

(a) *Adjustments for factors not reflected or inappropriately reflected in physical condition score.* Under circumstances described in this section, HUD may determine it is appropriate to review the results of a project's physical inspection that are unusual or incorrect due to facts and circumstances affecting the PHA's project that are not reflected in the inspection or that are reflected inappropriately in the inspection.

(1) The circumstances described in this section are not the circumstances that may be addressed by the technical review process described in § 902.68. The circumstances addressed in this paragraph (a)(1) of this section may include inconsistencies between local

code requirements and the HUD physical inspection protocol; conditions that are permitted by local variance or license or which are preexisting physical features that do not conform to, or are inconsistent with, HUD's physical condition protocol; or the project or PHA having been scored for elements (e.g., roads, sidewalks, mail boxes, resident-owned appliances, etc.) that it does not own and is not responsible for maintaining. To qualify for an adjustment on this basis, the project or PHA must have notified the proper authorities regarding the deficient element.

(2) An adjustment due to these circumstances may be initiated by a project or PHA's notification to the applicable HUD field office, and such notification shall include appropriate proof of the reasons for the unusual or incorrect result. Projects and PHAs may submit the request for this adjustment either prior to or after the physical inspection has been concluded. If the request is made after the conclusion of the physical inspection, the request must be made within 45 days of issuance of the project's or PHA's physical condition score. Based on the recommendation of the applicable HUD office following its review of the project evidence or documentation submitted by the project or PHA, HUD may determine that a reinspection and/or rescoring of the project or PHA is necessary.

(b) *Adjustments for adverse conditions beyond the control of the PHA.* Under certain circumstances, HUD may determine that certain deficiencies that adversely and significantly affect the physical condition score of the project were caused by circumstances beyond the control of the PHA. The correction of these conditions, however, remains the responsibility of the PHA.

(1) The circumstances addressed by this paragraph (b)(1) may include, but are not limited to, damage caused by third parties (such as a private entity or public entity undertaking work near a public housing project that results in damage to the project) or natural disasters. The circumstances addressed in this paragraph (b)(1) are not those addressed by the technical review process in § 902.68.

(2) To adjust a physical condition score based on circumstances addressed in this paragraph, the PHA must submit a request to the applicable HUD field office requesting a reinspection or rescoring of the PHA's project(s) dependent on the severity of the deficiency. The request must be submitted within 45 days of the issuance of the physical condition score to the PHA. If the PHA is requesting a reinspection, the request must be accompanied by a certification that all deficiencies identified in the original report have been corrected. Based on the recommendation of the applicable HUD office following its review of the project's or PHA's evidence or documentation, HUD may determine that a reinspection and rescoring of the PHA's project(s) is necessary.

(c) *Adjustments for modernization work in progress.* HUD may determine that occupied dwelling units or other areas of a PHA's project, which are subject to physical inspection under this subpart, and which are undergoing modernization work, require an adjustment to the physical condition score.

(1) An occupied dwelling unit or other areas of a PHA's project undergoing modernization are subject to physical inspection; the unit(s) and other areas of the PHA's project are not exempt from physical inspection. All elements of the unit or of the other areas of the PHA's project that are subject to inspection and are not undergoing modernization at the time of the inspection (even if modernization is planned) will be subject to HUD's physical inspection protocol without adjustment. For those elements of the unit or of the project that are undergoing modernization, deficiencies will be noted in accordance with HUD's physical inspection protocol, but the project or PHA may request adjustment of the physical condition score as a result of modernization work in progress.

(2) An adjustment due to modernization work in progress may be initiated by a project's or PHA's notification to the applicable HUD field office, and the notification shall include supporting documentation of the modernization work under way at the time of the physical inspection. A project or PHA may submit the request for this adjustment either prior to or after the physical inspection has been concluded. If the request is made after the conclusion of the physical inspection, the request must be made within 45 days of issuance of the physical condition score. Based on the recommendation of the applicable HUD office, HUD may determine that a reinspection and rescoring of the PHA's project(s) are necessary.

§ 902.25 Physical condition scoring and thresholds.

(a) *Scoring.* Under the physical condition indicator, a score will be calculated for individual projects, as well as for the overall condition of a PHA's public housing portfolio.

(b) *Overall PHA physical condition indicator score.* The overall physical condition indicator score is a unit-weighted average of project scores. The sum of the unit-weighted values is divided by the total number of units in the PHA's portfolio to derive the overall physical condition indicator score.

(c) *Thresholds.* (1) The project or projects' 100-point physical condition score is converted to a 40-point basis for the overall physical condition indicator score. The project scores on the 100-point basis are multiplied by .40 in order to derive a 40-point equivalent score to compute the overall physical condition score and overall PHAS score.

(2) In order to receive a passing score under the physical condition indicator, the PHA must achieve a score of at least 24 points, or 60 percent.

(3) A PHA that receives fewer than 24 points will be categorized as a substandard physical condition agency.

§ 902.26 Physical Inspection Report.

(a) Following the physical inspection of each project and the computation of the score(s) under this subpart, the PHA receives a Physical Inspection Report. The Physical Inspection Report allows the PHA to see the points lost by inspectable area, and the impact on the score of the H&S and EHS deficiencies.

(1) If EHS items are identified in the report, the PHA shall have the opportunity to correct, remedy, or act to abate all EHS deficiencies and may request a reinspection.

(2) The request for reinspection must be made within 45 days of the PHA's receipt of the Physical Inspection Report. The request for reinspection must be accompanied by the PHA's identification of the EHS deficiencies that have been corrected, remedied, or acted upon to abate and by the PHA's certification that all such deficiencies identified in the report have been corrected, remedied, or acted upon to abate.

(3) If HUD determines that a reinspection is appropriate, it will arrange for a complete reinspection of the project(s) in question, not just the deficiencies previously identified. The reinspection will constitute the final physical inspection for the project, and HUD will issue a new inspection report (the final inspection report).

(4) If any of the previously identified EHS deficiencies that the PHA certified were corrected, remedied, or acted upon to abate are found during the reinspection not to have been corrected, remedied, or acted upon to abate, the score in the final inspection report will

reflect a point deduction of triple the value of the original deduction, up to the maximum possible points for the unit or area, and the PHA must reimburse HUD for the cost of the reinspection.

(5) If a request for reinspection is not made within 45 days after the date that the PHA receives the Physical Inspection Report, the Physical Inspection Report issued to the PHA will be the final Physical Inspection Report.

(b) A Physical Inspection Report includes the following items:

(1) Normalized weights as the "possible points" by area;

(2) The area scores, taking into account the points deducted for observed deficiencies;

(3) The H&S (nonlife threatening) and EHS (life threatening) deductions for each of the five inspectable areas; a listing of all observed smoke detector deficiencies; and a projection of the total number of H&S and EHS problems that the inspector potentially would see in an inspection of all buildings and all units; and

(4) The overall project score.

Subpart C—Financial Condition Indicator

§ 902.30 Financial condition assessment.

(a) *Objective.* The objective of the financial condition indicator is to measure the financial condition of each public housing project within a PHA's public housing portfolio for the purpose of evaluating whether there are sufficient financial resources to support the provision of housing that is DSS/GR. Individual project scores for financial condition, as well as overall financial condition scores, will be issued.

(b) *Financial reporting standards.* A PHA's financial condition will be assessed under this indicator by measuring the combined performance of all public housing projects in each of the subindicators listed in § 902.35, on the basis of the annual financial report provided in accordance with § 902.33.

(c) *Exclusions.* Mixed-finance projects are excluded from the financial condition indicator.

§ 902.33 Financial reporting requirements.

(a) *Annual financial report.* All PHAs must submit their unaudited and audited financial data to HUD on an annual basis. The financial information must be:

(1) Prepared in accordance with Generally Accepted Accounting Principles (GAAP), as further defined by HUD in supplementary guidance; and

(2) Submitted electronically in the format prescribed by HUD using the Financial Data Schedule (FDS).

(b) *Annual unaudited financial information report filing dates.* The unaudited financial information to be submitted to HUD in accordance with paragraph (a) of this section must be submitted to HUD annually, no later than 2 months after the PHA's fiscal year end, with no penalty applying until the 16th day of the 3rd month after the PHA's fiscal year end, in accordance with § 902.62.

(c) *Annual audited financial information compliance dates.* Audited financial statements will be required no later than 9 months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133 (*see* 24 CFR 85.26).

(d) *Year-end audited financial information.* All PHAs that meet the federal assistance threshold stated in the Single Audit Act and OMB Circular A–133 must also submit year-end audited financial information.

(e) *Submission of information.* In addition to the submission of information required by paragraph (a) of this section, a PHA shall provide one copy of the completed audit report package and the Management Letter issued by the Independent Auditor to the local HUD field office having jurisdiction over the PHA.

§ 902.35 Financial condition scoring and thresholds.

(a) *Scoring.* (1) Under the financial condition indicator, a score will be calculated for each project based on the values of financial condition subindicators and an overall financial condition score, as well as audit and internal control flags. Each financial condition subindicator has several levels of performance, with different point values for each level.

(2) The financial condition score for projects will be based on the annual financial condition information submitted to HUD for each project under 24 CFR 990.280 and 990.285. The financial condition score for PHAs will be based on a unit-weighted average of project scores.

(b) *Subindicators of the financial condition indicator.* The subindicators of financial condition indicator are:

(1) *Quick Ratio (QR).* The QR compares quick assets to current liabilities. Quick assets are cash and assets that are easily convertible to cash and do not include inventory. Current liabilities are those liabilities that are due within the next 12 months. A QR of less than one indicates that the project's ability to make payments on a timely basis may be at risk.

(2) *Months Expendable Net Assets Ratio (MENAR).* The MENAR measures a project's ability to operate using its net available, unrestricted resources without relying on additional funding. This ratio compares the adjusted net available unrestricted resources to the average monthly operating expenses. The result of this calculation shows how many months of operating expenses can be covered with currently available, unrestricted resources.

(3) *Debt Service Coverage Ratio (DSCR).* The DSCR is the ratio of net operating income available to make debt payments, to the amount of the debt payments. This subindicator is used if the PHA has taken on long-term obligations. A DSCR of less than one would indicate that the project would have difficulty generating sufficient cash flow to cover both its expenses and its debt obligations.

(c) *Overall PHA financial condition indicator score.* The overall financial condition indicator score is a unit-weighted average of project scores. The sum of the weighted values is then divided by the total number of units in the PHA's portfolio to derive the overall financial condition indicator score.

(d) *Thresholds.* (1) The PHA's financial condition score is based on a maximum of 25 points.

(2) In order for a PHA to receive a passing score under the financial condition indicator, the PHA must achieve a score of at least 15 points, or 60 percent of the available points under this indicator.

(3) A PHA that receives fewer than 15 points available under this indicator will be categorized as a substandard financial condition agency.

Subpart D—Management Operations Indicator

§ 902.40 Management operations assessment.

(a) *Objective.* The objective of the management operations indicator is to measure the PHA's performance of management operations through the management performance of each project.

(b) *Exclusions.* Mixed-finance projects are excluded from the management operations indicator.

§ 902.43 Management operations performance standards.

(a) *Management operations subindicators.* The following subindicators listed in this section will be used to assess the management operations of projects and PHAs,

consistent with section 6(j)(1) of the Act (42 U.S.C. 1437d(j)(1)). Individual project scores for management operations, as well as overall PHA management operations scores, will be issued.

(1) *Occupancy.* This subindicator measures the occupancy for the project's fiscal year, adjusted for allowable vacancies.

(2) *Tenant accounts receivable.* This subindicator measures the tenant accounts receivable of a project against the tenant charges for the project's fiscal year.

(3) *Accounts payable.* This subindicator measures the money that a project owes to vendors at the end of the project's fiscal year for products and services purchased on credit against total operating expenses.

(b) *Assessment under the Management Operations Indicator.* Projects will be assessed under this indicator through information that is electronically submitted to HUD through the FDS.

§ 902.44 Adjustment for physical condition and neighborhood environment.

(a) *General.* In accordance with section 6(j)(1)(I)(2) of the Act (42 U.S.C. 1437d(j)(1)(I)(2)), the overall management operations score for a project will be adjusted upward to the extent that negative conditions are caused by situations outside the control of the project. These situations are related to the poor physical condition of the project or the overall depressed condition of the major census tract in which a project is located. The intent of this adjustment is to avoid penalizing such projects, through appropriate application of the adjustment.

(b) *Definitions.* Definitions and application of physical condition and neighborhood environment factors are:

(1) Physical condition adjustment applies to projects at least 28 years old, based on the unit-weighted average Date of Full Availability (DOFA) date.

(2) Neighborhood environment adjustment applies to projects located in census tracts where at least 40 percent of the families have an income below the poverty rate, as documented by the most recent census data. If a project is located in more than one census tract, the census data for the census tract where the majority of the project's units are located shall be used.

(c) *Adjustment for physical condition and neighborhood environment.* HUD will adjust the management operations score of a project, subject to one or both of the physical condition and neighborhood environment conditions. The adjustments will be made to the overall management operations score for each project so as to reflect the difficulty in managing the projects. In each instance where the actual management operations score is rated below the maximum score of 25 points, one point each will be added for physical condition and neighborhood environment, but not to exceed the maximum number of 25 points available for the management operations indicator.

(d) *Application of adjustment.* The adjustment for physical condition and neighborhood environment will be calculated by HUD and applied to all eligible projects.

§ 902.45 Management operations scoring and thresholds.

(a) *Scoring.* Under the management operations indicator, HUD will calculate a score for each project, as well as for the overall management operations of a PHA, that reflects weights based on the relative importance of the individual management subindicators.

(b) *Overall PHA management operations indicator score.* The overall management operations indicator score is a unit-weighted average of project scores. The sum of the weighted values is divided by the total number of units in the PHA's portfolio to derive the overall management operations indicator score.

(c) *Thresholds.* (1) The PHA's management operations score is based on a maximum of 25 points.

(2) In order to receive a passing score under the management operations indicator, a PHA must achieve a score of at least 15 points or 60 percent.

(3) A PHA that receives fewer than 15 points will be categorized as a substandard management operations agency.

Subpart E—Capital Fund Program Indicator

§ 902.50 Capital Fund program assessment.

(a) *Objective.* The Capital Fund program indicator examines the period of time taken by a PHA to obligate funds and occupy units in relation to statutory deadlines for obligation for all Capital Fund program grants for which fund balances remain during the assessed fiscal year. Funds from the Capital Fund program under section 9(d) of the Act (42 U.S.C. 1437g(d)) do not include HOPE VI program funds.

(b) *Applicability.* This indicator is applicable on a PHA-wide basis, and not to individual projects. This indicator is not applicable to PHAs that choose not to participate in the Capital Fund program under section 9(d) of the Act.

(c) *Capital Fund subindicators.* The subindicators pursuant to section 9(d) of the Act are:

(1) Timeliness of fund obligation. This subindicator examines the period of time it takes for a PHA to obligate funds from the Capital Fund program under section 9(j)(1) of the 1937 Act (42 U.S.C. 1437g(9)(j)).

(2) Occupancy rate. This subindicator measures the PHA's occupancy rate as of the end of the PHA's fiscal year.

(d) *Method of assessment.* The assessment required under the Capital Fund program indicator will be performed through analysis of obligated amounts in HUD's eLOCCS (or its successor) for all Capital Fund program grants that were open during the assessed fiscal year. This subindicator measures a statutory requirement for the Capital Fund program. Other aspects of the Capital Fund program will be monitored by HUD through other types of reviews, and in this indicator through considering occupancy rates.

(1) PHAs are responsible to ensure that their Capital Fund program information is submitted to eLOCCS by the submission due date.

(2) A PHA may not appeal its PHAS score, Capital Fund program score, or both, based on the fact that it did not submit its Capital Fund program information to eLOCCS and/or the PIC systems by the submission due date.

§ 902.53 Capital Fund program scoring and thresholds.

(a) *Scoring.* The Capital Fund program indicator score provides an assessment of a PHA's ability to obligate Capital Fund program grants in a timely manner on capital and modernization needs.

(b) *Thresholds.*

(1) The PHA's Capital Fund program score is based on a maximum of 10 points.

(2) In order to receive a passing score under the Capital Fund program indicator, a PHA must achieve a score of at least 5 points, or 50 percent.

Subpart F—PHAS Scoring

§ 902.60 Data collection.

(a) *Fiscal year reporting period—limitation on changes after PHAS effective date.* To allow for a period of consistent assessments to refine and make necessary adjustments to PHAS, a PHA is not permitted to change its fiscal year for the first 3 full fiscal years following the effective date of this regulation, unless such change is approved by HUD for good cause.

(b) *Request for extension of time to submit unaudited financial information.* In the event of extenuating

circumstances, a PHA may request extensions of time to submit its unaudited financial information. To receive an extension, a PHA must ensure that HUD receives the extension request electronically 15 days before the submission due date. The PHA's electronic extension request must include an objectively verifiable justification as to why the PHA cannot submit the information by the submission due date. PHAs shall submit their requests for extensions of time for the submission of unaudited financial information through the FASS–PH Secure Systems Web site. HUD shall forward its determination electronically to the requesting PHA.

(c) *Request for waiver of due date for PHA submission of audited financial information.* (1) HUD, for good cause, may grant PHAs a waiver of the due date of the submission of audited financial information to HUD. HUD shall consider written requests from PHAs for a waiver of the report submission due date (established by the Single Audit Act and OMB Circular A–133 as no later than 9 months after the end of the fiscal year). The PHA's written request for a waiver of the due date of the submission of audited financial information must include an objectively verifiable justification as to why the PHA cannot submit the information by the submission due date. A PHA shall submit its written request for such a waiver, 30 days prior to the submission due date, to its local field office. HUD shall forward its written determination of the waiver request to the PHA and, if appropriate, establish a new submission due date for the audited financial information.

(2) A waiver of the due date for the submission of audited financial information to HUD does not relieve a PHA of its responsibility to submit its audited information to OMB's Federal Audit Clearinghouse no later than 9 months after the end of its fiscal year.

(d) *Rejected unaudited financial submissions.* When HUD rejects a PHA's year-end unaudited financial information after the due date, a PHA shall have 15 days from the date of the rejection to resubmit the information without a penalty being applied, in accordance with § 902.62.

(e) *Late points and late presumptive failure.* Late points and late presumptive failure will only be applied to the financial condition indicator since the management operations information is derived from the financial condition submission.

(f) *Score change.* A management operations score can change as a result of the audited submission since the management operations information is derived from the financial condition submission.

§ 902.62 Failure to submit data.

(a) *Failure to submit data by due date.* (1) If a PHA without a finding of good cause by HUD does not submit its year-end financial information, required by this part, or submits its unaudited year-end financial information more than 15 days past the due date, appropriate sanctions may be imposed, including a reduction of one point in the total PHAS score for each 15-day period past the due date.

(2) If the unaudited year-end financial information is not received within 3 months past the due date, or extended due date, the PHA will receive a presumptive rating of failure for its unaudited information and shall receive zero points for its unaudited financial information and the final financial condition indicator score. The subsequent timely submission of audited information does not negate the score of zero received for the unaudited year-end financial information submission.

(3) The PHA's audited financial statement must be received no later than 9 months after the PHA's fiscal year-end, in accordance with the Single Audit Act and OMB Circular A–133 (see § 902.33(c)). If the audited financial statement is not received by that date, the PHA will receive a presumptive rating of failure for the financial condition indicator.

(b) *Verification of information submitted.* (1) A PHA's year-end financial information and any supporting documentation are subject to review by an independent auditor, as authorized by section 6(j)(6) of the Act (42 U.S.C. 1437(d)(j)(6)). Appropriate sanctions for intentional false certification will be imposed, including civil penalties, suspension or debarment of the signatories, the loss of high performer designation, a lower score under the financial condition indicator, and a lower overall PHAS score.

(2) A PHA that cannot provide justifying documentation to HUD for the assessment under any indicator(s) or subindicator(s) shall receive a score of zero for the relevant indicator(s) or subindicator(s) and its overall PHAS score shall be lowered accordingly.

(c) *Failure to submit.* If a PHA does not submit its unaudited or audited information, it will receive a zero for management operations.

§ 902.64 PHAS scoring and audit reviews.

(a) *Adjustments to PHAS score.* (1) Adjustments to the score may be made after a PHA's audit report for the fiscal year being assessed is transmitted to HUD. If significant differences are noted between unaudited and audited results, a PHA's PHAS score will be adjusted in accordance with the audited results.

(2) A PHA's PHAS score under individual indicators or subindicators, or its overall PHAS score, may be changed by HUD in accordance with data included in the audit report or obtained through such sources as HUD project management and other reviews, investigations by HUD's Office of Fair Housing and Equal Opportunity, investigations or audits by HUD's Office of Inspector General, or reinspection by HUD, as applicable.

(b) *Issuance of a score by HUD.* (1) An overall PHAS score will be issued for each PHA after the later of one month after the submission due date for financial data or one month after submission by the PHA of its financial data. The overall PHAS score becomes the PHA's final PHAS score after any adjustments requested by the PHA and determined necessary under the processes provided in §§ 902.25(d), 902.35(a), and 902.68; any adjustments resulting from the appeal process provided in § 902.69; and any adjustments determined necessary as a result of the independent public accountant (IPA) audit.

(2) Each PHA (or RMC) shall post a notice of its final PHAS score and designation in appropriate conspicuous and accessible locations in its offices within 2 weeks of receipt of its final PHAS score and designation. In addition, HUD will post every PHA's PHAS score and designation on HUD's Internet site.

(c) *Review of audit.* (1) *Quality control review.* HUD may undertake a quality control review of the audit work papers or as part of the Department's ongoing quality assurance process.

(2) *Determination of deficiency.* If HUD determines that the PHA's financial statements, electronic financial submission, or audit are deficient, it shall notify the PHA of such determination in writing. The PHA will have 30 days in which to respond to the notice of deficiency and to establish that the determination is erroneous. Following consideration of any PHA response, HUD will issue a final determination in writing to the PHA.

(i) *Deficient financial statements.* Deficient financial statements are statements that are not presented, in some material respect, in accordance with accounting principles generally accepted in the United States, as set forth by the Government Accounting

Standards Board, or if applicable, the Financial Accounting Standards Board.

(ii) *Deficient electronic submission.* A deficient electronic financial submission is a filing that was not made, in some material respect, in accordance with HUD requirements or attested to in accordance with the Standards for Attestation Engagements issued by the American Institute of Certified Public Accountants or Generally Accepted Government Auditing Standards.

(iii) *Deficient audit.* A deficient audit is one that was not performed, in some material respect, in compliance with Generally Accepted Government Auditing Standards; Generally Accepted Auditing Standards; the Single Audit Act and OMB Circular A–133, when applicable; or HUD requirements.

(3) *HUD actions.* If HUD determines that the financial statements, electronic financial submission, or audit are deficient, HUD may adjust the financial indicator score to zero and/or reduce the overall PHAS score in accordance with the provisions of this section. Additionally, if HUD determines that the audit is deficient, HUD may, at its discretion, elect to serve as the audit committee for the PHA for the next fiscal year and select the audit firm that will perform the audit in question.

§ 902.66 Withholding, denying, and rescinding designation.

(a) *Withholding designation.* In exceptional circumstances, even though a PHA has satisfied all of the PHAS indicators for high performer or standard performer designation, HUD may conduct any review as it may determine necessary, and may deny or rescind incentives or high performer designation or standard performer designation, in the case of a PHA that:

(1) Is operating under a special agreement with HUD (*e.g.,* a civil rights compliance agreement);

(2) Is involved in litigation that bears directly upon the physical, financial, or management performance of a PHA;

(3) Is operating under a court order;

(4) Demonstrates substantial evidence of fraud or misconduct, including evidence that the PHA's certifications, submitted in accordance with this part, are not supported by the facts, as evidenced by such sources as a HUD review, routine reports, an Office of Inspector General investigation/audit, an independent auditor's audit, or an investigation by any appropriate legal authority; or

(5) Demonstrates substantial noncompliance in one or more areas of a PHA's required compliance with applicable laws and regulations, including areas not assessed under PHAS. Areas of substantial noncompliance include, but are not limited to, noncompliance with civil rights, nondiscrimination and fair housing laws and regulations, or the ACC. Substantial noncompliance casts doubt on the capacity of a PHA to preserve and protect its public housing projects and operate them consistent with federal laws and regulations.

(b) *High performer and standard designations.* If a high performer designation is denied or rescinded, the PHA shall be designated either a standard performer, substandard performer, or troubled performer, depending on the nature and seriousness of the matter or matters constituting the basis for HUD's action. If a standard performer designation is denied or rescinded, the PHA shall be designated as a substandard performer or troubled performer.

(c) *Effect on score.* The denial or rescission of a designation of high performer or standard performer shall not affect the PHA's numerical PHAS score, except where the denial or rescission is under paragraph (a)(4) of this section.

§ 902.68 Technical review of results of PHAS physical condition indicator.

(a) *Request for technical reviews.* This section describes the process for requesting and granting technical reviews of physical inspection results.

(1) For these reviews, the burden of proof is on the PHA to show that an error occurred.

(2) A request for technical review must be submitted in writing to the Real Estate Assessment Center, Attention: TAC—Technical Review, 550 12th Street, SW., Suite 100, Washington, DC 20410 and must be received by HUD no later than 30 days following the issuance of the applicable results to the PHA.

(b) *Technical review of results of physical inspection results.* (1) For each project inspected, the results of the physical inspection and a score for that project will be provided to the PHA. If the PHA believes that an objectively verifiable and material error(s) occurred in the inspection of an individual project, the PHA may request a technical review of the inspection results for that project. Material errors are the only grounds for technical review of physical inspection results.

(2) A PHA's request for a technical review must be accompanied by the PHA's evidence that an objectively verifiable and material error(s) has occurred. The documentation submitted by the PHA may be photographic evidence; written material from an objective source, such as a local fire marshal or building code official or a licensed or registered architect or professional engineer with the authority to sign and seal or "stamp" documents, thus taking the legal responsibility for them, or other similar evidence that is specific to the inspectable area and item being challenged. The evidence must be more than a disagreement with the inspector's observations, or the inspector's finding regarding the severity of the deficiency.

(3) A technical review of a project's physical inspection will not be conducted based on conditions that were corrected subsequent to the inspection, nor will a request for a technical review be considered if the request is based on a challenge to the inspector's findings as to the severity of the deficiency (*i.e.,* minor, major, or severe).

(4) Upon receipt of a PHA's request for technical review of a project's inspection results, the PHA's file will be reviewed, including any objectively verifiable evidence produced by the PHA. If HUD's review determines that an objectively verifiable and material error(s) has been documented, then one or a combination of the following actions may be taken by HUD:

(i) Undertake a new inspection;

(ii) Correct the physical inspection report;

(iii) Issue a corrected physical condition score; and

(iv) Issue a corrected PHAS score.

(5) In determining whether a new inspection of the project is warranted and a new PHAS score must be issued, the PHA's file will be reviewed, including any evidence submitted, to determine whether the evidence supports that there may have been a material contractor error in the inspection that results in a significant change from the project's original physical condition score and the PHAS designation assigned to the PHA (i.e., high performer, standard performer, substandard performer, or troubled performer). If HUD determines that a new inspection is warranted, and the new inspection results in a significant change from the original physical condition score, and from the PHA's PHAS score and PHAS designation, the PHA shall be issued a new PHAS score.

(6) Material errors are those that exhibit specific characteristics and meet specific thresholds. The three types of material errors are:

(i) *Building data error.* A building data error occurs if the inspection includes the wrong building or a

building that was not owned by the PHA, including common or site areas that were not a part of the project. Incorrect building data that does not affect the score, such as the address, building name, year built, etc., would not be considered material, but will nonetheless be corrected upon notice to HUD.

(ii) *Unit count error.* A unit count error occurs if the total number of public housing units considered in scoring is incorrect. Since scoring uses total public housing units, HUD will examine instances where the participant can provide evidence that the total units used is incorrect.

(iii) *Nonexistent deficiency error.* A nonexistent deficiency error occurs if the inspection cites a deficiency that does not exist.

(7) HUD's decision on a request for technical review is final and may not be further appealed under the administrative process in § 902.69.

§ 902.69 PHA right of petition and appeal.

(a) *Appeal of troubled performer designation and petition for removal of troubled performer designation.* A PHA may take any of the following actions:

(1) Appeal its troubled performer designation (including Capital Fund program troubled performer designation);

(2) Appeal its final overall PHAS score;

(3) Petition for removal of troubled performer designation;

(4) Appeal any refusal of a petition to remove troubled performer designation; and

(5) Appeal actions under § 902.66.

(b) *Appeal of PHAS score.* (1) If a PHA believes that an objectively verifiable and material error(s) exists in any of the scores for its PHAS indicators, which, if corrected, will result in a significant change in the PHA's PHAS score and its designation (i.e., as troubled performer, substandard performer, standard performer, or high performer), the PHA may appeal its PHAS score in accordance with the procedures of paragraphs (c), (d), and (e) of this section. A significant change in a PHAS score is a change that would cause the PHA's PHAS score to increase, resulting in a higher PHAS designation for the PHA (i.e., from troubled performer to substandard performer or standard performer, or from standard performer to high performer).

(2) A PHA may not appeal its PHAS score, physical condition score, or both, based on the subsequent correction of deficiencies identified as a result of a project's physical inspection or the denial of a technical review request.

(3) A PHA may not appeal its PHAS score, Capital Fund program score, or both, based on the fact that it did not submit its Capital Fund program information to eLOCCS by the submission due date.

(c) *Appeal and petition procedures.* (1) To appeal a troubled performer designation or a final overall PHAS score, a PHA must submit a request in writing to the Deputy Assistant Secretary of the Real Estate Assessment Center, which must be received by HUD no later than 30 days following the issuance of the overall PHAS score to the PHA. To petition the removal of a troubled performer designation, a PHA must submit its request in writing to the Deputy Assistant Secretary of the Real Estate Assessment Center.

(2) To appeal the denial of a petition to remove a troubled performer designation, a PHA must submit a written request to the Deputy Assistant Secretary of the Real Estate Assessment Center, which must be received by HUD no later than 30 days after HUD's decision to refuse to remove the PHA's troubled performer designation.

(3) To appeal the petition for the removal of a troubled performer designation, or appeal the denial of a petition to remove a troubled performer designation, a PHA shall submit its request in writing to the Deputy Assistant Secretary of the Real Estate Assessment Center.

(4) An appeal of a troubled performer designation, the petition for removal of a troubled performer designation, or the appeal of a refusal of a petition to remove a troubled performer designation must include the PHA's supporting documentation and reasons for the appeal or petition. An appeal of a PHAS score must be accompanied by the PHA's evidence that a material error occurred. An appeal or petition submitted to HUD without supporting documentation will not be considered and will be returned to the PHA.

(d) *Denial, withholding, or rescission.* A PHA that disagrees with the basis for denial, withholding, or rescission of its designation under § 902.66 may make a written request for reinstatement within 30 days of notification by HUD of the denial or rescission of the designation to the Assistant Secretary, and the request shall include reasons for the reinstatement.

(e) *Consideration of petitions and appeals.* (1) Consideration of a petition or the appeal of a final overall PHAS score, of a troubled performer designation, or of a petition to remove troubled performer designation. Upon receipt of such an appeal or a petition from a PHA, HUD will evaluate the appeal and its merits for purposes of determining whether a reassessment of the PHA is warranted. HUD will review the PHA's file and the evidence submitted by the PHA to determine whether an error occurred.

(2) Consideration of an appeal of refusal to remove a troubled performer designation. Upon receipt of an appeal of refusal to remove a troubled performer designation, HUD will evaluate the appeal and its merits for the purposes of determining whether a reassessment of the PHA is warranted. The HUD staff initially evaluating an appeal of refusal to remove a troubled performer designation will not be the same HUD staff who evaluated the PHA's petition to remove the troubled performer designation. The Assistant Secretary will render the final determination of such an appeal.

(f) *Notice and finality of decisions.* (1) If HUD determines that one or more objectively verifiable and material error has occurred, HUD will undertake a new inspection of the project, arrange for audit services, adjust the PHA's score, or perform other reexamination of the financial, management, or Capital Fund program information, as appropriate in light of the nature of the error that occurred. A new score will be issued and an appropriate performance designation made by HUD. HUD's decision on appeal of a PHAS score, issuance of a troubled performer designation, or refusal to remove a troubled performer designation will be final agency action. No reconsideration will be given by HUD of such decisions.

(2) HUD will issue a written decision on all appeals and petitions made under this section.

Subpart G—PHAS Incentives and Remedies

§ 902.71 Incentives for high performers.

(a) *Incentives for high performer PHAs.* A PHA that is designated a high performer will be eligible for the following incentives, and such other incentives that HUD may determine appropriate and permissible under program statutes or regulations.

(1) *Relief from specific HUD requirements.* A PHA that is designated a high performer will be relieved of specific HUD requirements (*e.g.,* will receive fewer reviews and less monitoring), effective upon notification of a high performer designation.

(2) *Public recognition.* High performer PHAs and RMCs that receive a score of at least 60 percent of the points available for the physical condition, financial condition, and management operations indicators, and at least 50

percent of the points available for the Capital Fund indicator, and achieve an overall PHAS score of 90 percent or greater of the total available points under PHAS shall be designated a high performer and will receive a Certificate of Commendation from HUD, as well as special public recognition, as provided by the field office.

(3) *Bonus points in funding competitions.* A high performer PHA may be eligible for bonus points in HUD's funding competitions, where such bonus points are not restricted by statute or regulation governing the funding program and are provided in the relevant notice of funding availability.

(b) *Compliance with applicable federal laws and regulations.* Relief from any standard procedural requirement that may be provided under this section does not mean that a PHA is relieved from compliance with the provisions of federal law and regulations or other handbook requirements. For example, although a high performer or standard performer may be relieved of requirements for prior HUD approval for certain types of contracts for services, the PHA must still comply with all other federal and state requirements that remain in effect, such as those for competitive bidding or competitive negotiation (*see* 24 CFR 85.36).

(c) *Audits and reviews not relieved by designation.* A PHA designated as a high performer or standard performer remains subject to:

(1) Regular independent auditor audits;

(2) Office of Inspector General audits or investigations as circumstances may warrant; and

(3) Reviews identified by the regional or field office in its current Risk Assessment of PHAs and projects.

§ 902.73 PHAs with deficiencies.

(a) *Oversight and action.* Standard and substandard performers will be referred to the field office for appropriate oversight and action.

(1) A standard performer that receives a total score of at least 60 percent shall be required to correct the deficiencies in performance within the time period for correction, as stated in § 902.73(c). If the PHA fails to correct the deficiencies, HUD may either require the PHA to enter into a Corrective Action Plan, or HUD may take other action, as appropriate.

(2) A substandard performer, *i.e.,* a PHA that achieves a PHAS score of at least 60 percent and achieves a score of less than 60 percent of the total points available under one or more of the physical condition, management operations, or financial condition PHAS indicators, shall be required to correct the deficiencies in performance within the time period for correction. If the PHA fails to correct the deficiencies, HUD may require the PHA to enter into a Corrective Action Plan, or take other action, as appropriate.

(3) A PHA with a project(s) that receives less than 60 percent of the points available for the physical condition, management operations, or financial condition PHAS indicators, or less than 50 percent of the points available for the capital fund indicator, shall be required to correct the deficiencies in performance within the time period for correction, as stated in § 902.73(b). If the PHA fails to correct the deficiencies within the time period allowed, HUD may either require the PHA to enter into a Corrective Action Plan, or take other action, as appropriate.

(b) *Correction of deficiencies.* (1) *Time period for correction.* After a PHA's (or DF–RMC's) receipt of its final overall PHAS score and designation as: A standard performer, within the range described in § 902.73(a)(1); or substandard performer, within the range described in § 902.73(a)(2), or, in the case of an RMC, after notification of its score from a PHA, a PHA or RMC shall correct any deficiency indicated in its assessment within 90 days, or within such period as provided in the HUD-executed Corrective Action Plan, if required.

(2) *Notification and report to regional or field office.* A PHA shall notify the regional or field office of its action to correct a deficiency. A PHA shall also forward to the regional or field office an RMC's report of its action to correct a deficiency. A DF–RMC shall forward directly to the regional or field office its report of its action to correct a deficiency.

(c) *Failure to correct deficiencies.* (1) If a PHA (or DF–RMC or RMC) fails to correct deficiencies within the time period noted in paragraph (b) of this section, or to correct deficiencies within the time specified in a Corrective Action Plan, or within such extensions as may be granted by HUD, the field office will notify the PHA of its noncompliance.

(2) The PHA (or DF–RMC or RMC) will provide the field office with its reasons for lack of progress in negotiating, executing, or carrying out the Corrective Action Plan, within 30 days of the PHA's receipt of the noncompliance notification. HUD will advise the PHA as to the acceptability of its reasons for lack of progress.

(3) If HUD finds the PHA's (or DF–RMC or RMC's) reasons for lack of progress unacceptable, HUD will notify the PHA (or DF–RMC or RMC) that it will take such actions as it may determine appropriate in accordance with the provisions of the 1937 Act and other statutes, the ACC, this part, and other HUD regulations, including, but not limited to, the remedies available for substantial default.

§ 902.75 Troubled performers.

(a) *General.* Upon a PHA's designation as a troubled performer, in accordance with the requirements of section 6(j)(2)(B) of the Act (42 U.S.C. 1437d(j)(2)(B)) and in accordance with this part, HUD must notify the PHA and shall refer each troubled performer PHA to the PHA's field office, or other designated office(s) at HUD, for remedial action, oversight, and monitoring. The actions to be taken by HUD and the PHA will include statutorily required actions, and such other actions as may be determined appropriate by HUD.

(b) *Memorandum of agreement (MOA).* Within 30 days of notification of a PHA's designation as a troubled performer, HUD will initiate activities to negotiate and develop an MOA. An MOA is required for a troubled performer. The final MOA is a binding contractual agreement between HUD and a PHA. The scope of the MOA may vary depending upon the extent of the problems present in the PHA. It shall include, but not be limited to:

(1) Baseline data, which should be data without adjustments or weighting but may be the PHA's score in each of the PHAS indicators or subindicators identified as a deficiency;

(2) Performance targets for such periods specified by HUD (*e.g.,* annual, semiannual, quarterly, monthly), which may be the attainment of a higher score within an indicator or subindicator that is a problem, or the description of a goal to be achieved;

(3) Strategies to be used by the PHA in achieving the performance targets within the time period of the MOA, including the identification of the party responsible for the completion of each task and for reporting progress;

(4) Technical assistance to the PHA provided or facilitated by HUD; for example, the training of PHA employees in specific management areas or assistance in the resolution of outstanding HUD monitoring findings;

(5) The PHA's commitment to take all actions within its control to achieve the targets;

(6) Incentives for meeting such targets, such as the removal of a troubled performer designation or troubled with respect to the program for

assistance from the Capital Fund program under section 9(d) of the Act (42 U.S.C. 1437g(d)) and HUD recognition for the most-improved PHAs;

(7) The consequences of failing to meet the targets, which include, but are not limited to, the interventions stated in 24 CFR part 907 and in section 6(j)(3) of the Act (42 U.S.C. 1437d(j)(3)); and

(8) A description of the involvement of local public and private entities, including PHA resident leaders, in carrying out the agreement and rectifying the PHA's problems. A PHA shall have primary responsibility for obtaining active local public and private entity participation, including the involvement of public housing resident leaders, in assisting PHA improvement efforts. Local public and private entity participation should be premised upon the participant's knowledge of the PHA, ability to contribute technical expertise with regard to the PHA's specific problem areas, and authority to make preliminary commitments of support, financial or otherwise.

(c) *PHA review of MOA.* The PHA will have 10 days to review the MOA. During this 10-day period, the PHA shall resolve any claimed discrepancies in the MOA with HUD, and discuss any recommended changes and target dates for improvement to be incorporated in the final MOA. Unless the time period is extended by HUD, the MOA is to be executed 15 days following issuance of the draft MOA.

(d) *Maximum recovery period.* (1) *Expiration of the first-year improvement period.* Upon the expiration of the one-year period that started on the date on which the PHA receives initial notice of a troubled performer designation, the PHA shall, by the next PHAS assessment that is at least 12 months after the initial notice of the troubled performer designation, improve its performance by at least 50 percent of the difference between the initial PHAS assessment score that led to the troubled performer status and the score necessary to remove the PHA's designation as a troubled performer.

(2) *Expiration of 2-year recovery period.* Upon the expiration of the 2-year period that started on the date on which the PHA received the initial notice of a troubled performer designation, the PHA shall, by the next PHAS assessment that is at least 24 months after the initial notice of the troubled performer designation, improve its performance and achieve an overall PHAS score of at least 60 percent of the total points available.

(e) *Parties to the MOA.* An MOA shall be executed by:

(1) The PHA Board Chairperson (supported by a Board resolution), or a receiver (pursuant to a court-ordered receivership agreement, if applicable) or other AME acting in lieu of the PHA Board;

(2) The PHA Executive Director, or a designated receiver (pursuant to a court-ordered receivership agreement, if applicable), or other AME-designated Chief Executive Officer; and

(3) The field office

(f) *Involvement of resident leadership in the MOA.* HUD encourages the inclusion of the resident leadership in the execution of the MOA.

(g) *Failure to execute MOA or make substantial improvement under MOA.* (1) If a troubled performer PHA fails or refuses to execute an MOA within the period provided in paragraph (c) of this section, or a troubled performer PHA operating under an executed MOA does not show a substantial improvement, as provided in paragraph (d) of this section, toward a passing PHAS score following the issuance of the failing PHAS score by HUD, the field office shall refer the PHA to the Assistant Secretary to determine such remedial actions, consistent with the provisions of the ACC and other HUD regulations, including, but not limited to, remedies available for substantial default.

(2) For purposes of paragraph (g) of this section, substantial improvement is defined as the improvement required by paragraph (d) of this section. The maximum period of time for remaining in troubled performer status before being referred to the Assistant Secretary is 2 years after the initial notification of the troubled performer designation. Therefore, the PHA must make substantial improvement in each year of this 2-year period.

(3) The following example illustrates the provisions of paragraph (g)(1) of this section:

Example: A PHA receives a score of 50 points on the physical condition, management operations, or financial condition PHAS indicators; 60 points is a passing score. Upon the expiration of the one-year period that started on the date on which the PHA received the initial notification of the troubled performer designation, the PHA must achieve at least 55 points (50 percent of the 10 points necessary to achieve a passing score of 60 points) to continue recovery efforts. In the second year, the PHA must achieve a minimum score of 60 points (a passing score). If, in the first year that started on the date on which the PHA received the initial notification of the troubled designation, the PHA fails to achieve the 5-point increase, or if the PHA achieves the 5 point increase within the first year that started on the date on which the PHA received the initial notification of the troubled designation, but fails to achieve the minimum passing score of 60 points after the second year after the initial notification, HUD will notify the PHA that it will take such actions as it may determine appropriate in accordance with the provisions of the ACC and other HUD regulations, including, but not limited to, the remedies available for substantial default.

(h) *Audit review.* For a PHA designated as a troubled performer, HUD may perform an audit review and may, at its discretion, select the audit firm that will perform the audit of the PHA; and HUD may, at its discretion, serve as the audit committee for the audit in question.

(i) *Continuation of services to residents.* To the extent feasible, while a PHA is in a troubled performer status, all services to residents will continue uninterrupted.

§ 902.79 Verification and records.

All project and PHA certifications, year-end financial information, and supporting documentation are subject to HUD verification at any time, including review by an independent auditor. All PHAs must retain supporting documents for any certifications and for asset management reviews for at least 3 years. Failure to maintain and provide supporting documentation for a period of 3 years for any indicator(s), subindicator(s), or other methods used to assess performance shall result in a score of zero for the indicator(s) or subindicator(s), and a lower overall PHAS score for the applicable assessment period.

§ 902.81 Resident petitions for remedial action.

Residents of a PHA designated as troubled pursuant to section 6(j)(2)(A) of the Act (42 U.S.C. 1437d(j)(2)(A)) may petition HUD in writing to take one or more of the actions referred to in section 6(j)(3)(A) of the Act (42 U.S.C. 1437d(j)(3)(A)). HUD will consider any petition from a group of residents totaling at least 20 percent of the PHA's residents, or from an organization or organizations of residents whose membership equals at least 20 percent of the PHA's residents. HUD shall respond to such petitions in a timely manner with a written description of the actions, if any, HUD plans to take and, where applicable, the reasons why such actions differ from the course proposed by the residents. Nothing in this section shall limit HUD's discretion to determine whether a substantial default

has occurred or to select the appropriate intervention upon such determination.

§ 902.83 Sanctions for troubled performer PHAs.

(a) If a troubled performer PHA fails to make substantial improvement, as set forth in § 902.75(d), HUD shall:

(1) In the case of a troubled performer PHA with 1,250 or more units, declare substantial default in accordance with § 907.3(b)(3) of this chapter and petition for the appointment of a receiver pursuant to section 6(j)(3)(A)(ii) of the Act (42 U.S.C. 1437d(j)(3)(A)(ii)); or

(2) In the case of a troubled performer PHA with fewer than 1,250 units, declare substantial default in accordance with § 907.3(b)(3) of this chapter and either petition for the appointment of a receiver pursuant to section 6(j)(3)(A)(ii) of the Act (42 U.S.C. 1437d(j)(3)(A)(ii)), or take possession of the PHA (including all or part of any project or program of the PHA) pursuant to section 6(j)(3)(A)(iv) of the Act (42 U.S.C. 1437d(j)(3)(A)(iv)), and appoint, on a competitive or noncompetitive basis, an individual or entity as an administrative receiver to assume the responsibilities of HUD for the administration of all or part of the PHA (including all or part of any project or program of the PHA).

(3) In the case of substantial default by a troubled performer PHA, nothing in this section shall be construed to limit the courses of action available to HUD under this part, 24 CFR part 907, or section 6(j)(3)(A) of the Act (42 U.S.C. 1437d(j)(3)(A)) for any other substantial default by a PHA.

(b) If a troubled performer PHA fails to execute or meet the requirements of an MOA in accordance with § 902.75, other than as specified in paragraph (a) of this section, the PHA may be deemed to be in substantial default by HUD and any remedy available therefore may be invoked in the discretion of HUD.

3. Add part 907 to read as follows:

PART 907—SUBSTANTIAL DEFAULT BY A PUBLIC HOUSING AGENCY

Sec.

Authority: 42 U.S.C. 1437d(j), 42 U.S.C. 3535(d).

§ 907.1 Purpose and scope.

This part provides the criteria and procedures for determining and declaring substantial default by a public housing agency (PHA) and the actions available to HUD to address and remedy substantial default by a PHA. Nothing in this part shall limit the discretion of HUD to take any action available under the provisions of section 6(j)(3)(A) of the 1937 Act (42 U.S.C. 1437d(j)(3)(A)), any applicable annual contributions contract (ACC), or any other law or regulation that may authorize HUD to take actions against a PHA that is in substantial default.

§ 907.3 Bases for substantial default.

(a) *Violations of laws and agreements.* A PHA may be declared in substantial default when the PHA:

(1) Violates a federal statute;

(2) Violates a federal regulation; or

(3) Violates one or more terms of an ACC, or other covenants or conditions to which the PHA is subject.

(b) *Failure to act.* In addition to the violations listed in paragraph (a) of this section, in the case where a PHA is designated as a troubled performer under PHAS, the PHA shall be in substantial default if the PHA:

(1) Fails to execute an MOA;

(2) Fails to comply with the terms of an MOA; or

(3) Fails to show substantial improvement, as provided in § 902.75(d) of this chapter.

§ 907.5 Procedures for declaring substantial default.

(a) *Notification of finding of substantial default.* If the PHA is found in substantial default, the PHA shall be notified of such determination in writing. Except in situations as described in paragraph (d) of this section, the PHA shall have an opportunity to respond to the written determination, and an opportunity to cure the default, if a cure of the default is determined appropriate by HUD. The determination of substantial default shall be transmitted to the Executive Director of the PHA, the Chairperson of the Board of the PHA, and the appointing authority(ies) of the PHA's Board of Commissioners, and shall:

(1) Identify the specific statute, regulation, covenants, conditions, or agreements of which the PHA is determined to be in violation;

(2) Identify the specific events, occurrences, or conditions that constitute the violation;

(3) Specify the time period, which shall be a period of 10 but not more than 30 days, during which the PHA shall have an opportunity to demonstrate that the determination or finding is not substantively accurate, if required;

(4) If determined by HUD to be appropriate, provide for an opportunity to cure and specify the time period for the cure; and

(5) Notify the PHA that, absent a satisfactory response in accordance with paragraph (b) of this section, action shall be taken as determined by HUD to be appropriate.

(b) *Receipt of notification and response.* Upon receipt of the notification described in paragraph (a) of this section, the PHA may submit a response, in writing and within the specified time period, demonstrating:

(1) The description of events, occurrences, or conditions described in the written determination of substantial default is in error, or establish that the events, occurrences, or conditions described in the written determination of substantial default do not constitute noncompliance with the statute, regulation, covenants, conditions, or agreements that are cited in the notification under paragraph (a) of this section; or

(2) If any opportunity to cure is provided, that the violations have been cured or will be cured in the time period specified by HUD.

(c) *Waiver of notification and the opportunity to respond.* A PHA may waive, in writing, receipt of written notification from HUD of a finding of substantial default and the opportunity to respond to such finding. HUD may then immediately proceed with the remedies as provided in § 907.7.

(d) *Emergency situations.* A PHA shall not be afforded the opportunity to respond to a written determination or to cure a substantial default in any case where:

(1) HUD determines that conditions exist that pose an imminent threat to the life, health, or safety of public housing residents or residents of the surrounding neighborhood; or

(2) The events or conditions precipitating the default are determined to be the result of criminal or fraudulent activity.

§ 907.7 Remedies for substantial default.

(a) Except as provided in § 907.7(c), upon determining that events have occurred or conditions exist that constitute a substantial default, HUD may:

(1) Take any action provided for in section 6(j)(3) of the Act (42 U.S.C. 1437d(j)(3));

(2) Provide technical assistance for existing PHA management staff; or

(3) Provide assistance deemed necessary, in the discretion of HUD, to remedy emergency conditions.

(b) HUD may take any of the actions described in paragraph (a) of this section sequentially or simultaneously in any combination.

(c) In the case of a substantial default by a troubled PHA pursuant to § 902.83(b):

(1) For a PHA with 1,250 or more units, HUD shall petition for the appointment of a receiver pursuant to section 6(j)(3)(A)(ii) of the 1937 Act (42 U.S.C. 1437d(j)(3)(A)(ii)); or

(2) For a PHA with fewer than 1,250 units, HUD shall either petition for the appointment of a receiver pursuant to section 6(j)(3)(A)(ii) of the Act (42 U.S.C. 1437d(j)(3)(A)(ii)), or take possession of the PHA (including all or part of any project or program of the PHA) pursuant to section 6(j)(3)(A)(iv) of the 1937 Act (42 U.S.C. 1437d(j)(3)(A)(iv)), and appoint, on a competitive or noncompetitive basis, an individual or entity as an administrative receiver to assume the responsibilities of HUD for the administration of all or part of the PHA (including all or part of any project or program of the PHA).

(d) To the extent feasible, while a PHA is operating under any of the actions that may have been taken by HUD, all services to residents will continue uninterrupted.

(e) HUD may limit remedies under this part to one or more of a PHA's specific operational areas (*e.g.,* maintenance, capital improvement, occupancy, or financial management), to a single program or group of programs, or to a single project or a group of projects. For example, HUD may select, or participate in the selection of, an AME to assume management responsibility for a specific project, a group of projects in a geographical area, or a specific operational area, while permitting the PHA to retain responsibility for all programs, operational areas, and projects not so designated.

Dated: February 1, 2011.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17
Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List *Astragalus hamiltonii, Penstemon flowersii, Eriogonum soredium, Lepidium ostleri,* and *Trifolium friscanum* as Endangered or Threatened; Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Docket No. [FWS–R6–ES–2010–0087; MO 92210–0–008]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List Astragalus hamiltonii, Penstemon flowersii, Eriogonum soredium, Lepidium ostleri, and Trifolium friscanum as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list *Astragalus hamiltonii* (Hamilton milkvetch), *Penstemon flowersii* (Flowers penstemon), *Eriogonum soredium* (Frisco buckwheat), *Lepidium ostleri* (Ostler's peppergrass), and *Trifolium friscanum* (Frisco clover) as threatened or endangered under the Endangered Species Act of 1973 (ESA), as amended. After review of all available scientific and commercial information, we find that listing *A. hamiltonii* and *P. flowersii* is not warranted at this time. However, we ask the public to submit to us new information that becomes available concerning the threats to *A. hamiltonii* and *P. flowersii* or their habitat at any time. We find that listing *E. soredium, L. ostleri,* and *T. friscanum* as threatened or endangered is warranted. However, currently *listing E. soredium, L. ostleri,* and *T. friscanum* is precluded by higher priority actions to amend the Federal Lists of Endangered and Threatened Wildlife and Plants. Upon publication of this 12-month petition finding, we will add *E. soredium, L. ostleri,* and *T. friscanum* to our candidate species list. We will develop proposed rules to list *E. soredium, L. ostleri,* and *T. friscanum* as our priorities allow. We will make determinations on critical habitat during development of the proposed listing rules. In the interim period, we will address the status of the candidate taxa through our annual Candidate Notice of Review.

DATES: The finding announced in this document was made on February 23, 2011.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R6–ES–2010–0087. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Utah Ecological Services Field Office, 2369 West Orton Circle, Suite 50, West Valley City, UT 84119. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Larry Crist, Field Supervisor, U.S. Fish and Wildlife Service, Utah Ecological Services Field Office, 2369 West Orton Circle, Suite 50, West Valley City, UT 84119; by telephone at 801–975–3330; or by facsimile at 801–975–3331mailto:. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that listing a species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we will determine that the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the ESA requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

Previous Federal Actions

On July 30, 2007, we received a petition dated July 24, 2007, from Forest Guardians (now WildEarth Guardians), requesting that the Service: (1) Consider all full species in our Mountain Prairie Region ranked as G1 or G1G2 by the organization NatureServe, except those that are currently listed, proposed for listing, or candidates for listing; and (2) list each species as either endangered or threatened. The petition included the five plant species addressed in this finding. The petition incorporated all analysis, references, and documentation provided by NatureServe in its online database at *http://www.natureserve.org/*. The document clearly identified itself as a petition and included the petitioners' identification information, as required in 50 CFR 424.14(a). We sent a letter to the petitioners, dated August 24, 2007, acknowledging receipt of the petition and stating that, based on preliminary review, we found no compelling evidence to support an emergency listing for any of the species covered by the petition.

On March 19, 2008, WildEarth Guardians filed a complaint (1:08–CV–472–CKK) indicating that the Service failed to comply with its mandatory duty to make a preliminary 90-day finding on their two multiple species petitions—one for mountain-prairie species and one for southwest species.

On June 18, 2008, we received a petition from WildEarth Guardians, dated June 12, 2008, to emergency list 32 species under the Administrative Procedure Act and the ESA. Of those 32 species, 11 were included in the July 24, 2007, petition to be listed on a nonemergency basis. Although the ESA does not provide for a petition process for an interested person to seek to have a species emergency listed, section 4(b)(7) of the ESA authorizes the Service to issue emergency regulations to temporarily list a species. In a letter dated July 25, 2008, we stated that the information provided in both the 2007 and 2008 petitions and in our files did not indicate that an emergency situation existed for any of the 11 species.

On February 5, 2009 (74 FR 6122), we published a 90-day finding on 165 species from the petition to list 206 species in the mountain-prairie region of the United States as endangered or threatened under the ESA. We found that the petition did not present substantial scientific or commercial information indicating that listing was warranted for these species and, therefore, did not initiate further status reviews in response to the petition. Two additional species were reviewed in a concurrent 90-day finding and again, we found that the petition did not present substantial scientific or commercial information indicating that listing was warranted for these species. Therefore we did not consider these two species further. For the remaining 39 species, we deferred our findings until a later date. One species of the 39 remaining species, *Sphaeralcea gierischii* (Gierisch

mallow), was already a candidate species for listing; therefore, 38 species remained for consideration. On March 13, 2009, the Service and WildEarth Guardians filed a stipulated settlement in the District of Columbia Court, agreeing that the Service would submit to the **Federal Register** a finding as to whether WildEarth Guardians' petition presented substantial information indicating that the petitioned action may be warranted for 38 mountain-prairie species by August 9, 2009 (*WildEarth Guardians* vs. *Salazar* 2009, case 1:08–CV–472–CKK).

On August 18, 2009, we published a notice of 90-day finding (74 FR 41649) on 38 species from the petition to list 206 species in the mountain-prairie region of the United States as endangered or threatened under the ESA. Of the 38 species, we found that the petition presented substantial scientific and commercial information for 29 species, indicating that listing may be warranted for those 29 species. The 5 species we address in this 12-month finding were included in these 29 species. We initiated a status review of the 29 species to determine if listing was warranted. We also opened a 60-day public comment period to allow all interested parties an opportunity to provide information on the status of the 29 species. The public comment period closed on October 19, 2009. We received 224 public comments. Of these, two specifically addressed *Astragalus hamiltonii, Penstemon flowersii, Eriogonum soredium, Lepidium ostleri,* and *Trifolium friscanum.* All information received has been carefully considered in this finding. This notice constitutes the 12-month finding on the July 24, 2007, petition to list five species (*A. hamiltonii, P. flowersii, E. soredium, L. ostleri,* and *T. friscanum*) as endangered or threatened.

Species Information—Astragalus hamiltonii

Taxonomy and Species Description

Astragalus hamiltonii is a bushy perennial plant in the bean family (Fabaceae) that can grow up to 24 inches (in) (60 centimeters (cm)) tall (Welsh *et al.* 2003, p. 374). It has several sparsely leafed stems, with three to five (sometimes seven) leaflets per leaf, each 0.8 to 1.6 in (2 to 4 cm) long and 0.2 to 0.4 in (5 to 10 millimeters (mm)) wide (Heil and Melton 1995a, p. 6). The terminal leaflet (at the tip of the leaf) is typically the largest leaflet (NatureServe 2009a, p. 3). In May and June, a single *A. hamiltonii* plant will produce many flowering stalks, with each stalk bearing 7 to 30 cream-colored flowers (Welsh *et al.* 2003, p. 374; NatureServe 2009a, p. 3). The fruits are hanging pods and usually mature by the end of June (NatureServe 2009a, p. 3).

Astragalus hamiltonii was first described in 1952 (Porter 1952, pp. 159–160). Although it was once considered a variety of *A. lonchocarpus* (Isely 1983, p. 422), *A. hamiltonii* is currently accepted as a distinct species, based on leaflet characteristics and geographic segregation (Barneby 1989, p. 72; Welsh *et al.* 2003, p. 374).

Distribution and Population Status

Astragalus hamiltonii occurs generally west and southwest of Vernal, Utah. The species is found on Bureau of Land Management (BLM) land, the Uintah and Ouray Indian Reservation (hereafter "Tribal") lands, State of Utah School and Institutional Trust Lands Administration (SITLA) lands, and private lands across an approximate area 10 mile (mi) (16.1 kilometer (km)) by 20 mi (32.2 km) (Figure 1). We do not have comprehensive survey information for *A. hamiltonii.* Therefore, we do not know the full extent of the species' distribution or if the distribution has changed over time.

The Utah Natural Heritage Program (UNHP) designates 11 element occurrences for *Astragalus hamiltonii* (UNHP 2010a, entire). Element occurrences are the specific locations, or sites, where plants are documented. Distinct element occurrences are identified if there is either 0.6 mi (1 km) of unsuitable habitat or 1.2 mi (2 km) of unoccupied, suitable habitat separating them (NatureServe 2004, p. 14).

Astragalus hamiltonii element occurrences are based on collections of herbarium specimens. Two of the element occurrences identified by the UNHP were from Colorado and the southeast corner of the Uinta Basin, but we believe these locations are likely *A. lonchocarpus,* based on leaf characteristics and geographic distribution (NatureServe 2009a, p. 1; Goodrich 2010a, entire), so they are not considered further in this finding. Hereafter, we base our analysis on the remaining nine element occurrences (Table 1; Goodrich 2010b, entire).

To determine the currently known distribution of *Astragalus hamiltonii,* we mapped the nine UNHP element occurrences (Figure 1). The UNHP records element occurrences using the public land survey system to the nearest quarter-quarter of the township, range, and section (UNHP 2010a, entire). These element occurrences were the basis for our "population areas," but the population areas' boundaries were expanded to the nearest quarter-quarter of the township, range, and section, to encompass the location data from the 2010 surveys (Table 1; Goodrich 2010b, entire). This mapping approach resulted in some of the newly created population areas' perimeters eventually abutting adjacent population areas (Table 1; Figure 1). Large areas of potential habitat remain unsurveyed, so it is possible that the species is continuous across its range, or occurs outside of our identified population areas (Figure 1).

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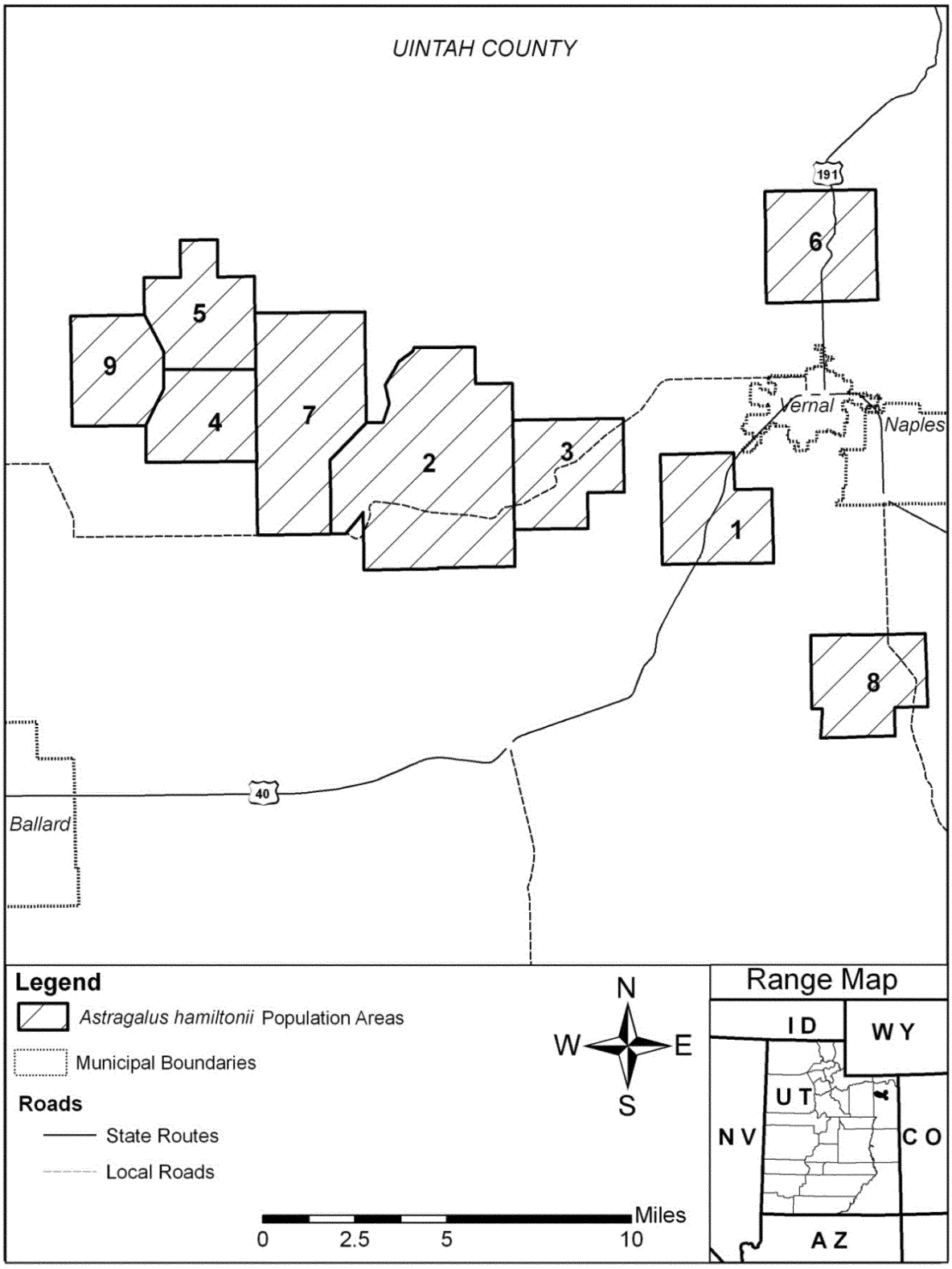

Figure 1. ***Astragalus hamiltonii*** **range and population areas.**

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TABLE 1—*Astragalus hamiltonii* PLANTS COUNTED IN 2010 SURVEYS

Population area	Percent land ownership				Number of Astragalus hamiltonii plants
	BLM	SITLA	Tribal	Private	
1	11	54	0	35	Not counted.
2	76	13	1	11	4,863.
3	44	56	0	0	544.
4	0	0	10	90	15.
5	0	0	89	11	60.
6	57	5	0	38	10.
7	0	0	52	48	345.
8	13	62	0	25	Not counted.
9	0	0	81	19	Not counted.
Total	30	18	23	28	5,837.

We do not have long-term population count or trend information. The total population of *Astragalus hamiltonii* was estimated at 10,000 to 15,000 plants in 1995 (Heil and Melton 1995a, p. 13). However, we do not know how this estimate was derived. In 2010, the U.S. Forest Service (USFS) counted over 5,800 *A. hamiltonii* individuals on BLM lands in areas west of Vernal in the vicinity of six of the element occurrences (numbers 2 to 7) (Table 1; Goodrich 2010b, entire). These were partial surveys that included revisits to six element occurrences.

Astragalus hamiltonii is distributed sparsely across the landscape at low densities, but in optimum habitat *A. hamiltonii* can grow at densities of one to two plants per square yard (yd^2) (square meter (m^2)) (Heil and Melton 1995a, p. 13). Because *A. hamiltonii* is scattered across the landscape with unsurveyed, potential habitat between known sites, we believe the known element occurrences may be linked by contiguous habitat, and may either be one large population or a series of populations within a metapopulation.

Habitat

Astragalus hamiltonii is a narrow endemic that grows on soils of the Duchesne River formation (Heil and Melton 1995a, p. 10; Goodrich 2010c, pp. 13, 15). Less frequently, it is found in Mowry Shale and Dakota formations (Welsh *et al.* 2003, p. 374). *A. hamiltonii* is typically found on benches and steep slopes at elevations of 4,900 to 6,200 feet (ft) (1,500 to 1,900 meters (m)). *A. hamiltonii* grows in red, erosive, sandy clay loam soils (Heil and Melton 1995a, pp. 10, 16; NatureServe 2009a, p. 3; Brunson 2010a, p. 1), and is associated with low-density desert shrub and juniper communities (Goodrich *et al.* 1999, p. 263; NatureServe 2009a, p. 3).

Astragalus hamiltonii grows in old road cuts and road beds, sometimes quite robustly and producing abundant flowers and fruit (Goodrich *et al.* 1999, p. 263). Therefore, we believe the species may be able to tolerate moderate soil disturbances (Neese and Smith 1982, p. 36; Goodrich *et al.* 1999, p. 263).

Life History

Astragalus hamiltonii growth, seedling establishment, and juvenile mortality are probably correlated with rainfall (Heil and Melton 1995a, p. 14). We do not know the reproductive system for this species, but it is assumed to reproduce mainly by outcrossing (cross-fertilization) (Heil and Melton 1995a, p. 14). Plants that are obligate outcrossers are self-incompatible, meaning they cannot fertilize themselves and, therefore, rely on other individuals of differing genetic make-up to reproduce (Stebbins 1970, p. 310).

Summary of Information Pertaining to the Five Factors—*Astragalus hamiltonii*

Section 4 of the ESA (16 U.S.C. 1533) and implementing regulations (50 CFR part 424) set forth procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the ESA, a species may be determined to be endangered or threatened based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In making our 12-month finding on the petition, we considered and evaluated the best available scientific and commercial information pertaining to *Astragalus hamiltonii* for the five factors provided in section 4(a)(1) of the ESA.

In considering what factors might constitute threats to a species, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to that factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat and, during the status review, we attempt to determine how significant a threat it is. The threat is significant if it drives, or contributes to, the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined in the ESA. However, the identification of factors that could impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence sufficient to suggest that these factors are operative threats that act on the species to the point that the species may meet the definition of endangered or threatened under the ESA.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The following factors may affect the habitat or range of *Astragalus hamiltonii:* (1) Conversion to agricultural use, (2) livestock grazing, (3) recreational activities, (4) oil and gas exploration and development, (5) nonnative invasive species, and (6) tar sands extraction.

(1) Conversion to Agricultural Use

Astragalus hamiltonii grows on private and Tribal lands that can be used for agriculture. Agricultural land conversion is a change in land use to an agricultural use, including crops and pastures. The conversion to agricultural use results in the loss and fragmentation

of native plant habitats, including habitats of *A. hamiltonii.*

Conversion of natural lands to agriculture historically impacted populations of *Astragalus hamiltonii* (Heil and Melton 1995a, p. 16), particularly in the four population areas where land ownership is private or Tribal. However, most of this development was limited to lower-lying areas outside of *A. hamiltonii* habitat (National Agriculture Imagery Program (NAIP) 2009, entire). It is likely that most of the suitable land in Uintah County, where irrigation water was available, was converted to agricultural use by 1970 (Hilton 2010, p. 1). Major changes in the amount of agricultural land in Uintah County are not expected in the future (Hilton 2010, p. 2). Although historical conversion to agricultural use may have negatively impacted *A. hamiltonii,* we have no evidence to indicate that this factor is a threat to this species now or for the foreseeable future.

(2) Livestock Grazing

Livestock grazing may result in the direct loss or damage to plants and their habitat through trampling, soil compaction, increased erosion, invasion of noxious weeds, and disturbance to pollinators (Kauffman *et al.* 1983, p. 684; Fleischner 1994, entire; Kearns *et al.* 1998, p. 90; DiTomaso 2000, p. 257). All BLM lands where *Astragalus hamiltonii* is documented are within grazing allotments, including portions of population areas 1, 2, 3, 6, and 8 (*see* Table 1). In 2010, of all *A. hamiltonii* counted, 5,417 individuals (93 percent) occur in existing grazing allotments. We have no information on the extent of grazing on private or Tribal lands.

We do not have any information concerning how grazing may affect this species. However, cattle tend to spend more time on gentle slopes (Van Buren 1982 in Fleischner 1994, p. 637). *Astragalus hamiltonii* grows on steep, erosive hillsides, and we believe this habitat preference offers some protection from livestock grazing and trampling. In addition, the grazing allotments that overlap *A. hamiltonii* sites on BLM land are fall and winter allotments (BLM 2008a, Appendix J); thus, *A. hamiltonii* is not actively growing or palatable when livestock are grazing these areas.

In summary, the species occurs in areas that are subject to livestock grazing. However, the fall-winter season of grazing greatly reduces the chance that the plants are eaten by livestock. *Astragalus hamiltonii* typically grows on steep slopes and can occur on disturbed soils, which minimizes negative effects from livestock trampling within *A. hamiltonii* habitat. Therefore, we do not believe that livestock grazing is a threat to *A. hamiltonii* now or for the foreseeable future.

(3) Recreational Activities

Off-highway vehicle (OHV) and recreational trail use (*e.g.,* mountain bikes and motorized bikes) may result in direct loss or damage to plants and their habitat through soil compaction, increased erosion, invasion of noxious weeds, and disturbance to pollinators and their habitat (Eckert *et al.* 1979, entire; Lovich and Bainbridge 1999, p. 316; Ouren et al. 2007, entire; BLM 2008a, pp. 4–94; Wilson *et al.* 2009, p. 1).

The OHV and recreational trail use occurs across the landscape where *Astragalus hamiltonii* grows. The OHV use is largely limited to existing roads and trails on BLM lands, which account for approximately a third of *A. hamiltonii's* known range (Table 1) (BLM 2008b, p. 46). There are no OHV restrictions on private or Tribal lands, but the species' association with steep, erosive hillsides likely minimizes OHV use in the species' habitat.

Unauthorized off-road use occurs in *Astragalus hamiltonii* habitat in population area 2 (Brunson 2010a, p. 3). However, we observed plants growing directly next to these recreational trails (Brunson 2010a, p. 3). As previously described, *A. hamiltonii* grows along road cuts and other disturbed areas, suggesting it can persist with some level of disturbance. We do not believe that the observed unauthorized off-road use is negatively impacting *A. hamiltonii.*

In summary, the species' habitat preference for steep slopes, its ability to grow in disturbed soils, and off-road restrictions on BLM lands minimize the impacts of recreational use to *Astragalus hamiltonii.* Thus, we do not believe that recreational activities are a threat to *A. hamiltonii* now or for the foreseeable future.

(4) Oil and Gas Exploration and Development

The effects of oil and gas exploration and development include increased vehicle traffic and removal of soil and vegetation when wells, roads, and associated infrastructure are built (BLM 2008c, pp. 448–449). These disturbances can affect rare plant species through habitat destruction, habitat fragmentation, soil disturbance, spread of invasive weeds, and production of fugitive dust (particulate matter suspended in the air by wind and human activities) (BLM 2008c, pp. 448–449).

Energy exploration and development occurs across *Astragalus hamiltonii's* known range, but only in localized areas with small numbers of wells (Utah Division of Oil, Gas, and Mining (UDOGM) 2010, p. 1). Only one well is producing in *A. hamiltonii* habitat, and another well is currently being drilled. Seventeen wells were plugged and abandoned, most prior to 1976 (Gordon 2010a, pers. comm.; UDOGM 2010, p. 1). Plugged and abandoned wells are no longer in use and are usually recontoured and revegetated to match the surrounding landscape (Gordon 2010b, pers. comm.). Plugged and abandoned wells also do not receive regular truck traffic like producing wells, so fugitive dust is less of an issue (Gordon 2010b, pers. comm.). Occasionally, plugged and abandoned wells may be reopened, disturbing areas that were previously reclaimed. If all the plugged and abandoned wells in *A. hamiltonii* habitat were reopened, this is still a small number of wells throughout the species' range.

Large portions of population areas 1, 2, 3, 6, 7, and 8 (Table 1) are overlapped by oil and gas leases on state, Tribal, and BLM land. Two BLM oil and gas leases in population area 2 overlap more than 4,000 known *Astragalus hamiltonii* individuals (UDOGM, 2010, p. 2). However, no oil or gas is being produced under these leases (UDOGM 2010, p. 2).

The lack of oil and gas development in *Astragalus hamiltonii* habitat is most likely because there is not enough of those products currently obtainable to be economically feasible using current extraction technology (Doyle 2010, pers. comm.; Sparger 2010, pers. comm.) rendering dense energy developments unlikely in this area for the next 20 years (BLM 2008c, p. 486). Although some oil and gas development may occur in *A. hamiltonii* habitat, we would not expect it at densities that would significantly impact the species. Furthermore, *A. hamiltonii* is adapted to at least some disturbance and may be afforded additional protection by its tendency to grow on steep slopes that may be unsuitable for energy development. Therefore, oil and gas development is unlikely to occur in the foreseeable future at densities that would significantly impact the species.

In summary, there is little oil and gas development within *Astragalus hamiltonii* habitat. Based on current technologies and low economic feasibility, we do not anticipate substantial development in the foreseeable future that would meaningfully impact the species. Therefore, we do not believe that oil and

gas exploration and development is a threat to *A. hamiltonii* now or in the foreseeable future.

(5) Nonnative Invasive Species

The spread of nonnative invasive species is considered the second largest threat to imperiled plants in the United States (Wilcove *et al.* 1998, p. 608). Invasive plants—specifically exotic annuals—negatively affect native vegetation, including rare plants. One of the most substantial effects is the change in vegetation fuel properties that, in turn, alter fire frequency, intensity, extent, type, and seasonality (Menakis *et al.* 2003, pp. 282–283; Brooks *et al.* 2004, p. 677; McKenzie *et al.* 2004, p. 898). Shortened fire return intervals make it difficult for native plants to reestablish or compete with invasive plants (D'Antonio and Vitousek 1992, p. 73).

Invasive plants can exclude native plants and alter pollinator behaviors (D'Antonio and Vitousek 1992, pp. 74–75; DiTomaso 2000, p. 257; Mooney and Cleland 2001, p. 5449; Levine *et al.* 2003, p. 776; Traveset and Richardson 2006, pp. 211–213). For example, *Bromus tectorum* outcompetes native species for soil nutrients and water (Melgoza *et al.* 1990, pp. 9–10; Aguirre and Johnson 1991, pp. 352–353).

Bromus tectorum (cheatgrass) is a particularly problematic nonnative invasive annual grass in the Intermountain West. If already present in the vegetative community, *B. tectorum* increases in abundance after a wildfire, increasing the chance for more frequent fires (D'Antonio and Vitousek 1992, pp. 74–75). In addition, *B. tectorum* invades areas in response to surface disturbances (Hobbs 1989, pp. 389, 393, 395, 398; Rejmanek 1989, pp. 381–383; Hobbs and Huenneke 1992, pp. 324–325, 329, 330; Evans *et al.* 2001, p. 1308). *B. tectorum* is likely to increase due to climate change (*see* Factor E) because invasive annuals increase biomass and seed production at elevated levels of carbon dioxide (Mayeux *et al.* 1994, p. 98; Smith *et al.* 2000, pp. 80–81; Ziska *et al.* 2005, p. 1328).

Bromus tectorum occurs in *Astragalus hamiltonii* habitat (Brunson 2010a, p. 1). However, *B. tectorum* and other invasive species are uncommon in many of the erosive red soils that *A. hamiltonii* prefers (Brunson 2010a, p. 1; Goodrich 2010c, p. 59). We do not anticipate a high degree of surface disturbances in *A. hamiltonii* habitats in the foreseeable future from other factors, such as livestock grazing or oil and gas development (Factor A).

In summary, we know that invasive species can impact plant communities by increasing fire frequencies, outcompeting native species, and altering pollinator behaviors. These factors could be exacerbated by climate change patterns. However, invasive species do not occur in high densities in *Astragalus hamiltonii* habitat. Based on this fact and the limited amount of surface-disturbing activities within the species' habitat, we do not anticipate that nonnative invasive species densities will increase significantly, even with climate change. Therefore, we do not believe nonnative invasive species, or associated fires, are a threat to *A. hamiltonii* now or for the foreseeable future.

(6) Tar Sands Extraction

The Duchesne River Formation, where most known *Astragalus hamiltonii* individuals occur, would be one of the formations targeted by tar sands extraction (BLM 2008d, p. 9). Tar sands extraction disturbs the soil surface and removes existing vegetation (BLM 2008d, p. 27). Impacts are similar to those described above in the Oil and Gas Exploration and Development section. Tar sands mining could result in the loss of *A. hamiltonii* individuals and their habitats.

Tar sands leases are proposed for sale on BLM and State Lands along Asphalt Ridge southwest of Vernal, Utah (UDOGM 2010, p. 3). These lease parcels do not overlap known *Astragalus hamiltonii* sites, but they overlap with unsurveyed potential habitat within portions of population area 1.

Tar sands leases are still in the proposal phase and there are currently no commercial tar sands operations on public lands in Utah (BLM 2008d, p. 4). High production costs and environmental issues are barriers to tar sands development in the United States (Bartis *et al.* 2005, pp. 15, 53; Engemann and Owyang 2010, entire). Tar sands extraction may be feasible if the cost of crude oil becomes high enough in the future, but these high price projections are not expected to be realized until at least 2030 (Engemann and Owyang 2010, p. 2), and even then the environmental issues will need to be resolved.

In summary, tar sands leases do not overlap a majority of *Astragalus hamiltonii* habitat. Large-scale, commercially viable development is not anticipated in the foreseeable future. Therefore, tar sands development is not considered a threat to *A. hamiltonii* now or in the foreseeable future.

Summary of Factor A

Based on the best available information, we have concluded that conversion to agricultural use, livestock grazing, recreational activities, nonnative invasive species, oil and gas exploration and development, or tar sands extraction do not threaten *Astragalus hamiltonii* now or in the foreseeable future. Conversion to agricultural use probably resulted in historical loss of some *A. hamiltonii* habitat, but we do not anticipate ongoing conversions to agricultural use in the future. In addition, most agricultural use occurs in low-lying areas outside of the species' distribution. *A. hamiltonii* is protected from livestock grazing due to its habitat preference for steep hillsides and the fall-winter grazing season of the associated allotments. Recreational use is not a threat to *A. hamiltonii* because BLM restricts off-trail use. Where off-trail use occurs on private, State, and Tribal lands, the adaptation of *A. hamiltonii* to steep slopes and disturbed soils allows it to persist with moderate habitat disturbance. *A. hamiltonii* soils do not appear to support invasive plant species at densities needed to sustain wildfires. We also do not anticipate increased surface disturbances that could encourage the establishment of invasive species in *A. hamiltonii* habitat. Although energy development leases overlap *A. hamiltonii* habitat, it is unlikely that current technologies and economic conditions will support oil and gas or tar sands development in this area in the foreseeable future. Thus, the present or threatened destruction, modification, or curtailment of the habitat or range is not a threat to *A. hamiltonii* now or in the foreseeable future.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Astragalus hamiltonii is not a plant of horticultural interest. We are not aware of any instances where *A. hamiltonii* was collected from the wild other than as voucher specimens to document occurrences (UNHP 2010a, entire). Therefore, we do not consider overutilization a threat to the species now or in the foreseeable future.

Factor C. Disease or Predation

We do not have any information indicating that disease impacts *Astragalus hamiltonii.* We also do not have information on the effects of herbivory (eating) by livestock (see the Livestock Grazing section above), wildlife, or insects. However, we do not

believe herbivory from livestock is a concern due to the steepness of the terrain on which the plant is located and the time of year grazing occurs in *A. hamiltonii* habitat (*see* Factor A, Livestock Grazing). Based on the best available information, we do not believe *A. hamiltonii* is threatened by disease or predation now or for the foreseeable future.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

There are no laws protecting plants on private, State, or Tribal lands in Utah. A third of *Astragalus hamiltonii* individuals are found on BLM land. *A. hamiltonii* is listed as a bureau sensitive plant for the BLM. Limited policy-level protection by the BLM is afforded through the Special Status Species Management Policy Manual # 6840 which forms the basis for special status species management on BLM lands (BLM 2008e, entire).

Despite the lack of regulatory mechanisms to protect *Astragalus hamiltonii,* we found that there are no threats to the species (Factors A, B, C, and E) that require regulatory mechanisms to protect the species. Therefore, we do not consider the inadequacy of regulatory mechanisms a threat to this species now or for the foreseeable future.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Natural and manmade factors affecting *Astragalus hamiltonii* include: (1) Small population size and (2) climate change and drought.

(1) Small Population Size

We lack information on the population genetics of *Astragalus hamiltonii,* and as a probable outcrosser, this species could potentially be subject to the negative effects of small population size. As previously described (*see* Life History, above), plants that are obligate outcrossers cannot fertilize themselves and rely on other individual plants of differing genetic make-up to reproduce (Stebbins, 1970, p. 310). Therefore, the fewer plants that are located at a site (*i.e.,* small population size), the less chance exists for sufficient cross-fertilization.

Small populations and species with limited distributions are vulnerable to relatively minor environmental disturbances (Given 1994, pp. 66–67). Small populations also are at an increased risk of extinction due to the potential for inbreeding depression, loss of genetic diversity, and lower sexual reproduction rates (Ellstrand and Elam 1993, entire; Wilcock and Neiland 2002, p. 275). Lower genetic diversity may, in turn, lead to even smaller populations by decreasing the species' ability to adapt, thereby increasing the probability of population extinction (Barrett and Kohn 1991, pp. 4, 28; Newman and Pilson 1997, p. 360).

We do not believe small population size is a concern for *Astragalus hamiltonii. A. hamiltonii* grows robustly and in high densities with many flowers and fruits (Goodrich 2010b, entire; Goodrich 2010c, p. 26). Although the species exists in a relatively small area (known distribution is 200 square miles (mi^2) (518 square kilometers (km^2)), it occurs across its range in a scattered—and potentially continuous—distribution. There are also large areas of suitable habitat that remain unsurveyed, so the species may be more widely distributed.

Astragalus hamiltonii's scattered distribution may contribute to its overall viability and potential resilience (Goodrich 2010b, p. 89). For example, small-scale stochastic events, such as the erosion of a hillside during a flood event, would probably destroy only a small portion of the known individuals of *A. hamiltonii.* It is possible that a landscape-level event, such as a wildfire, could destroy most known *A. hamiltonii* individuals, but the sparseness of the vegetation and the lack of fine fuels in *A. hamiltonii* habitat makes this event unlikely (Wright and Bailey 1982, p. 1; Olmstead 2010, pers. comm.). The lack of other surface-disturbing threats (*see* Factor A) also leads us to believe that the species' current distribution and population size will remain intact.

In the absence of information identifying threats to the species and linking those threats to the rarity of the species, we do not consider rarity alone to be a threat. A species that has always been rare, yet continues to survive, could be well equipped to continue to exist into the future. This may be particularly true for *Astragalus hamiltonii,* which is adapted to recolonize disturbed sites. Many naturally rare species have persisted for long periods within small geographic areas, and many naturally rare species exhibit traits that allow them to persist, despite their small population sizes. Consequently, the fact that a species is rare does not necessarily indicate that it may be in danger of extinction in the foreseeable future.

Based on *Astragalus hamiltonii's* apparently robust reproductive effort, scattered distribution, and lack of other threats, we believe that small population size is not a threat to this species now or for the foreseeable future.

(2) Climate Change and Drought

Climate change is likely to affect the long-term survival and distribution of native species, such as *Astragalus hamiltonii,* through changes in temperature and precipitation. Hot extremes, heat waves, and heavy precipitation will increase in frequency, with the Southwest experiencing the greatest temperature increase in the continental United States (Karl *et al.* 2009, pp. 28, 129). Approximately 20 to 30 percent of plant and animal species are at increased risk of extinction if increases in global average temperature exceed 2.7 to 4.5 degrees Fahrenheit (°F) (1.5 to 2.5 degrees Celsius (°C)) (Intergovernmental Panel on Climate Change (IPCC) 2007, p. 48). In the southwestern United States, average temperatures increased approximately 1.5 °F (0.8 °C) compared to a 1960 to 1979 baseline (Karl *et al.* 2009, p. 129). By the end of this century, temperatures are expected to warm a total of 4 to 10 °F (2 to 5 °C) in the Southwest (Karl *et al.* 2009, p. 129).

Annual mean precipitation levels are expected to decrease in western North America and especially the southwestern States by mid century (IPCC 2007, p. 8; Seager *et al.* 2007, p. 1181). Throughout *Astragalus hamiltonii's* range, precipitation is predicted to increase 10 to 15 percent in the winter, decrease 5 to 15 percent in spring and summer, and remain unchanged in the fall under the highest emissions scenario (Karl *et al.* 2009, p. 29). The levels of aridity of recent drought conditions and perhaps those of the 1950s drought years will become the new climatology for the southwestern United States (Seager *et al.* 2007, p. 1181). Much of the Southwest remains in a 10-year drought, "the most severe western drought of the last 110 years" (Karl *et al.* 2009, p. 130). Although droughts occur more frequently in areas with minimal precipitation, even a slight reduction from normal precipitation may lead to severe reductions in plant production. Therefore, the smallest change in environmental factors, especially precipitation, plays a decisive role in plant survival in arid regions (Herbel *et al.* 1972, p. 1084).

Atmospheric levels of carbon dioxide are expected to double before the end of the 21st century, which may increase the dominance of invasive grasses leading to increased fire frequency and severity across western North America (Brooks and Pyke 2002, p. 3; IPCC 2002, p. 32; Walther *et al.* 2002, p. 391).

Elevated levels of carbon dioxide lead to increased invasive annual plant biomass, invasive seed production, and pest outbreaks (Smith *et al.* 2000, pp. 80–81; IPCC 2002, pp. 18, 32; Ziska *et al.* 2005, p. 1328) and will put additional stressors on rare plants already suffering from the effects of elevated temperatures and drought.

No population trend data are available for *Astragalus hamiltonii,* but drought conditions led to a noticeable decline in survival, vigor, and reproductive output of other rare plants in the Southwest during the drought years of 2001 through 2004 (Anderton 2002, p. 1; Van Buren and Harper 2002, p. 3; Van Buren and Harper 2004, entire; Hughes 2005, entire; Clark and Clark 2007, p. 6; Roth 2008a, entire; Roth 2008b, pp. 3–4).

As discussed in the Life History section above, *Astragalus hamiltonii* seedling establishment is probably correlated with rainfall (Heil and Melton 1995a, p. 14); therefore, reduced precipitation may reduce seedling establishment. Additionally, the relatively localized distribution of *A. hamiltonii* may make this species more susceptible to landscape-level stochastic extinction events, such as regional drought. Despite these potential vulnerabilities, *A. hamiltonii* appears well-adapted to a dry climate and can quickly colonize after disturbance. Plants growing in high-stress landscapes are adapted to stress, and drought-adapted species may experience lower mortality during severe droughts (Gitlin *et al.* 2006, pp. 1477, 1484).

In summary, climate change is affecting and will affect temperature and precipitation events in the future. We expect that *Astragalus hamiltonii,* like other narrow endemics, may be negatively affected by climate change related drought. However, we believe that *A. hamiltonii's* adaptation to growing in high-stress environments renders this species less susceptible to negative effects from climate change. Although we believe climate change will impact plants in the future, the available information is too speculative to determine the likelihood of this potential threat to *A. hamiltonii.* Therefore, based on the best scientific and commercial information available, we conclude that climate change is not a threat to *A. hamiltonii* now or for the foreseeable future.

Summary of Factor E

We assessed the potential risks of small population size, climate change, and drought to *Astragalus hamiltonii.* There is no evidence that the species' small population size is a threat to *A. hamiltonii.* Rather, small, scattered populations are likely an evolutionary adaptation of this species. Climate change and resulting drought may affect *A. hamiltonii's* growth and reproductive success. However, *A. hamiltonii* is adapted to a landscape where drought naturally occurs and is able to rapidly colonize after disturbance. In addition, as described in Factor A, there are no threats to the species that would result in significant loss or fragmentation of available habitat, and thus there are no cumulative effects to exacerbate the threat of climate change. We currently lack sufficient information that other natural or manmade factors rise to the level of a threat to *A. hamiltonii* now or for the foreseeable future.

Finding

As required by the ESA, we conducted a review of the status of the species and considered the five factors in assessing whether *Astragalus hamiltonii* is endangered or threatened throughout all or a significant portion of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by *A. hamiltonii.* We reviewed the petition, information available in our files, and other available published and unpublished information, and we consulted with recognized *A. hamiltonii* experts and other Federal, State, and Tribal agencies.

The primary factor potentially impacting *Astragalus hamiltonii* is future energy development (oil, gas, and tar sands). However, energy development is not likely to occur on a broad scale throughout this species' range in the foreseeable future. Furthermore, the best available information shows that *A. hamiltonii* can tolerate some habitat disturbances. Other factors affecting *A. hamiltonii*—including land conversion to agricultural use, grazing, recreation, nonnative invasive species, and small population size—are either limited in scope, or we do not have evidence that supports these factors adversely impacting the species as a whole. We have no evidence that overutilization, disease, and predation are affecting this species. Although climate change will likely impact plants in the future, we do not have enough information to determine that climate change will elicit a species-level response from *A. hamiltonii.* Finally, because none of these factors rises to the level of a threat, the inadequacy of regulatory mechanisms does not negatively affect *A. hamiltonii.*

Based on our review of the best available scientific and commercial information pertaining to the five factors, we find that the factors analyzed above are not of sufficient imminence, intensity, or magnitude to indicate that *Astragalus hamiltonii* is in danger of extinction (endangered), or likely to become endangered within the foreseeable future (threatened), throughout its range. Therefore, we find that listing *A. hamiltonii* as a threatened or endangered species throughout its range is not warranted.

Significant Portion of the Range

Having determined that *Astragalus hamiltonii* does not meet the definition of a threatened or endangered species, we must next consider whether there are any significant portions of the range where *A. hamiltonii* is in danger of extinction or is likely to become endangered in the foreseeable future.

In determining whether a species is threatened or endangered in a significant portion of its range, we first identify any portions of the range of the species that warrant further consideration. The range of a species can theoretically be divided into portions an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and threatened or endangered. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be significant, and (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the species' range that are not significant, such portions will not warrant further consideration.

If we identify portions that warrant further consideration, we then determine whether the species is threatened or endangered in these portions of its range. Depending on the biology of the species, its range, and the threats it faces, the Service may address either the significance question or the status question first. Thus, if the Service considers significance first and determines that a portion of the range is not significant, the Service need not determine whether the species is threatened or endangered there. Likewise, if the Service considers status first and determines that the species is not threatened or endangered in a

portion of its range, the Service need not determine if that portion is significant. However, if the Service determines that both a portion of the range of a species is significant and the species is threatened or endangered there, the Service will specify that portion of the range as threatened or endangered under section 4(c)(1) of the ESA.

We have no evidence that any particular population or portion of the range of *Astragalus hamiltonii* is critical to the species' survival. Although population area 2 appears to have a majority of the known *Astragalus hamiltonii* individuals, this area has received a majority of the search effort. *A. hamiltonii* may actually occur continuously across its known range, but range-wide surveys have not been done. The population areas delineated in this document were derived from existing data and information; however, information on the species' distribution and numbers may change with more survey effort. Additionally, potential threats to the species are essentially uniform throughout its range. Therefore, we do not find that *A. hamiltonii* is in danger of extinction now, nor is it likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Therefore, listing *A. hamiltonii* as threatened or endangered under the ESA is not warranted at this time.

We request that you submit any new information concerning the status of, or threats to, *Astragalus hamiltonii* to our Utah Ecological Services Field Office (*see* **ADDRESSES** section) whenever such information becomes available. New information will help us monitor *A. hamiltonii* and encourage its conservation. If an emergency situation develops for *A. hamiltonii,* or any other species, we will act to provide immediate protection.

Species Information—Penstemon flowersii

Taxonomy and Species Description

Penstemon flowersii is an herbaceous plant in the figwort family (Scrophulariaceae) (Welsh *et al.* 2003, p. 624). This perennial plant can grow up to 14 in (36 cm) tall, with many branches that bloom dusty pink in May and June (Heil and Melton 1995b, pp. 6–7). It has dry, multi-part fruits less than 0.4 in (1 cm) long that split open when mature to release seeds (Neese and Welsh 1983, p. 429). *P. flowersii* has a poorly developed or absent basal rosette (a dense radiating cluster of leaves at the base of the plant) and smooth, thick leaves (Heil and Melton 1995b, pp. 6–7).

Penstemon flowersii was first described in 1983 by Neese and Welsh, and is an accepted taxonomic entity (Welsh *et al.* 2003, p. 624). *P. flowersii* resembles other species in the genus and is closest vegetatively to *P. carnosus* (Heil and Melton 1995b, p. 8), but *P. flowersii* is distinguished by its smaller stature and dusty pink flowers (Neese and Welsh 1983, pp. 429–431*). P. flowersii* is closely related to *P. immanifestus,* a species that grows elsewhere in Nevada and Utah but has a more prominently bearded staminode (sterile male reproductive part found in the flower) (Heil and Melton 1995b, p. 8).

Distribution and Population Status

Penstemon flowersii is found only in the Uinta Basin near Roosevelt, Utah. Its distribution straddles the Duchesne-Uintah County line (Figure 2). The species occurs across an area approximately 20 mi (32 km) by 4 mi (6.4 km) from Bridgeview to Randlett, Utah, in seven element occurrences (UNHP 2010b, entire) (*see* Distribution and Population Status section for *Astragalus hamiltonii* above for a complete definition of element occurrence). These seven element occurrences are not numbered consecutively because the UNHP combined previously disjunct element occurrences based on available information. As with *A. hamiltonii,* the element occurrences are recorded to the nearest quarter-quarter of the township, range, and section. This method of recording species locations gives the impression that element occurrences either overlap or join to form a continuous population. However, comprehensive surveys have not been done for all suitable habitats within an element occurrence, so we do not know if the population is continuous throughout the species' range.

Penstemon flowersii was recently identified north of element occurrence 9 (Spencer 2010a, entire). We refer to this location as the "new site" because it is not yet assigned to an element occurrence. At this time, we are unsure as to whether or not this new site will be designated as a new element occurrence or if it will be included in an existing element occurrence.

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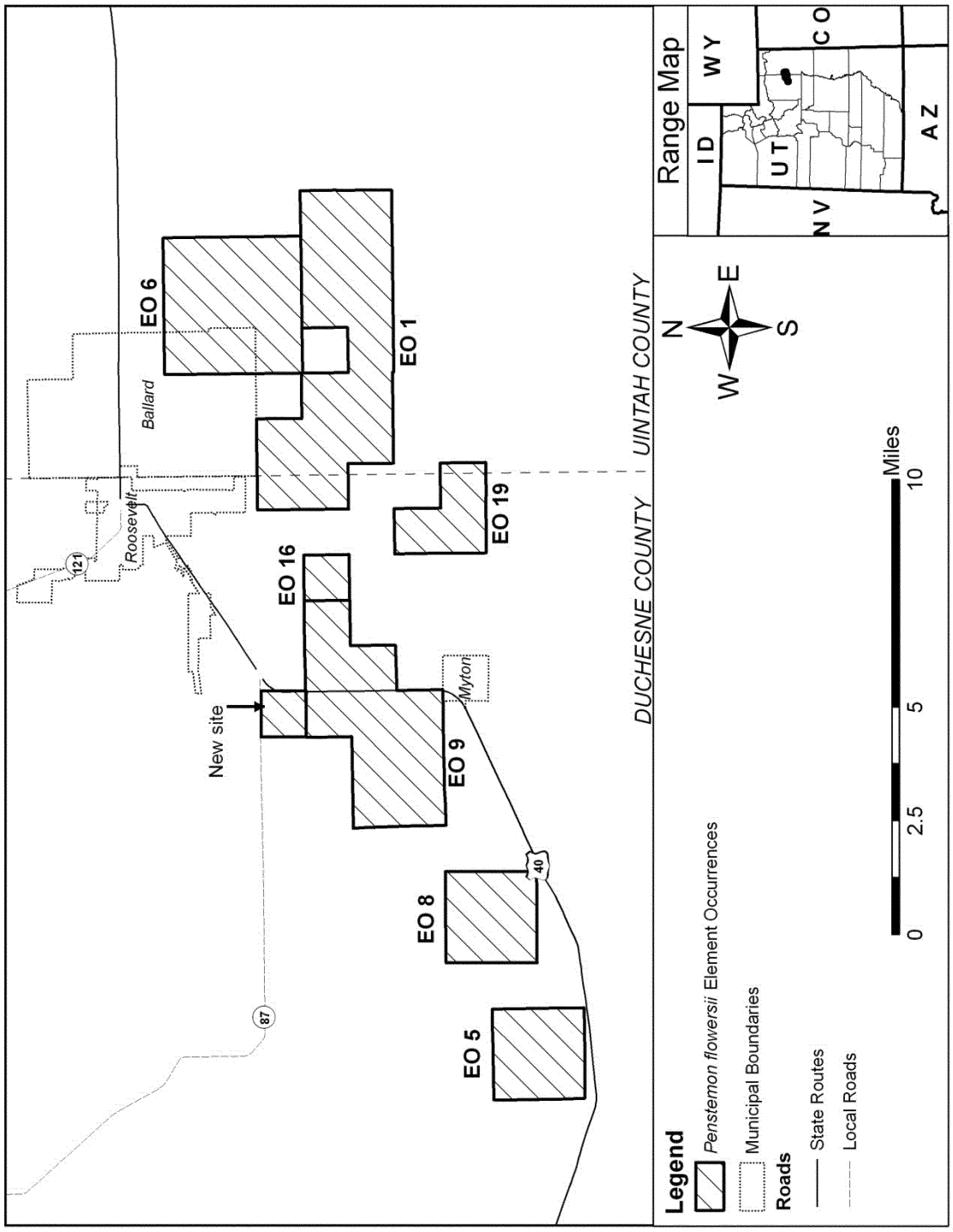

Figure 2. *Penstemon flowersii* range and element occurrences.

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Penstemon flowersii's distribution is patchy, although some sites can have moderately dense distribution with up to 10 plants in 1 yd^2 (1 m^2) (Heil and Melton 1995b, pp. 12–14). We do not know if the distribution of *P. flowersii* has changed over time because comprehensive surveys were not conducted for this species.

Penstemon flowersii is found almost completely on private and Tribal lands (Table 2), with the exception of element occurrence 19, which is on property managed by the Utah Reclamation Mitigation and Conservation Commission for the U.S. Bureau of Reclamation (BOR) (UNHP 2010b, entire).

TABLE 2—ESTIMATED NUMBER OF PENSTEMON FLOWERSII PLANTS

Element occurrence	Percent land ownership			Number of penstemon flowersii plants	Year of last survey
	Private	Tribal	BOR		
1	75	25	0	2,000–13,000	2001
5	94	6	0	101–1,000	1995
6	78	22	0	No count	1982
8	71	29	0	61–71	2004
9	91	9	0	51–100	2001
16	100	0	0	4	2001
19	44	21	35	552	2001
New site	100	0	0	29	2010
Total	79	19	2	2,798–14,756.	

The total number of *Penstemon flowersii* individuals in Table 2 was derived from actual counts or estimates provided for each element occurrence. However, these counts do not include all known locations (*e.g.,* private lands or BOR lands) for the species. The total number of *P. flowersii* individuals was previously estimated from 15,000 to 20,000 on private lands alone, not including Tribal land (Heil and Melton 1995b, p. 13; Franklin 2005, p. 131). We do not know how this estimate was derived.

We cannot make a more accurate estimate for the total number of *Penstemon flowersii* because many sites on private and Tribal lands are inaccessible, and *P. flowersii* population numbers fluctuate widely from year to year (Heil and Melton 1995b, p. 16; Prevedel 2001 pers. comm. in Franklin 2005, p. 131). Therefore, we do not have accurate population counts or trend information for this species.

Habitat

Penstemon flowersii is a narrow endemic that grows in *Atriplex confertifolia* (shadscale) communities on semibarren, gravelly clay slopes of the Uinta Formation (Heil and Melton 1995b, p. 9) at elevations ranging from 4,890 to 5,410 ft (1,490 to 1,650 m) (NatureServe 2009b, p. 2). It is found on both disturbed and undisturbed sites (Heil and Melton 1995b, p. 10).

Life History

We know little of *Penstemon flowersii's* life history. Plant growth, seedling establishment, and juvenile mortality for this species are probably correlated with rainfall (Heil and Melton 1995b, p. 14). Reproduction and recruitment were noted at multiple sites across all element occurrences (UNHP 2010b, entire; Brunson 2010b, p. 1). One site had an estimated age structure of 4 percent seedlings and 96 percent mature adults, indicating that recruitment is occurring (UNHP 2010b, entire). Pollinators observed visiting *P. flowersii* include species of the order Hymenoptera: *Anthophora affabilis, A. bomboides,* and a species in the genus *Osmia* (Tepedino 2007, pers. comm. in Frates 2010, p. 32).

Summary of Information Pertaining to the Five Factors—*Penstemon flowersii*

In making our 12-month finding on the petition, we considered and evaluated the best available scientific and commercial information pertaining to *Penstemon flowersii* in relation to the five factors provided in section 4(a)(1) of the ESA (*see* the full description of these five factors in the Summary of Information Pertaining to the Five Factors section for *Astragalus hamiltonii* above).

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The following factors may affect the habitat or range of *Penstemon flowersii:* (1) Conversion to agricultural use/livestock grazing, (2) recreational activities, (3) oil and gas exploration and development, (4) nonnative invasive species, and (5) rural residential development.

(1) Conversion to Agricultural Use/Livestock Grazing

For *Penstemon flowersii,* we combined two factors, conversion to agricultural use and livestock grazing, into one discussion because both of these factors occur on private lands. Historically, conversion of natural lands to agricultural use likely impacted *Penstemon flowersii* populations (Heil and Melton 1995b, pp. 8, 16), resulting in lower population numbers and habitat fragmentation. We believe the species was historically distributed in the low-lying areas because those areas that were not converted to agricultural use still contain *P. flowersii* plants (Franklin 2005, p. 131).

Most of the suitable land in Duchesne and Uintah Counties was converted to agricultural use by 1970 (NAIP 2009, p. 2; Hilton 2010, p.1). Major changes in the amount of agricultural land in these counties are not expected in the future (Hilton 2010, p. 2). Therefore, we would not expect future agricultural conversion in these areas at a level that would threaten the species as a whole.

The upper benches on private land where *Penstemon flowersii* now grows appear as nonirrigated terrain in digital imagery (NAIP 2009, p. 2), and thus these areas are not likely used for agriculture. It is possible that most of these nonirrigated lands are used for rangeland grazing. Heavy grazing was noted at one site (UNHP 2010b, entire), and, as previously described, livestock can graze and trample plants (BLM 2008c, p. 485). However, anecdotal observations indicate that this plant is not a preferred browse species by grazing livestock (Holmgren 2009 pers. comm. in Frates 2010, p. 35), and the species can tolerate some level of soil disturbances (*see* Habitat). *P. flowersii* was noted as thriving in pastures (Holmgren 2009 pers. comm. in Frates 2010, p. 35), so it appears that livestock grazing does not negatively impact the species. In summary, we have no information suggesting that conversion of habitat to agricultural use or livestock grazing are threats to *P. flowersii* now or for the foreseeable future.

(2) Recreational Activities

Recreational activities (*e.g.,* mountain bikes and motorized bikes) and OHV use can impact *Penstemon flowersii* and its habitat. The OHV use was documented within three element occurrences of *P. flowersii* to varying degrees (UNHP 2010b, entire). Two of these sites were listed in marginal condition, although plant vigor and reproduction at these sites was good (UNHP 2010b, entire). Disturbance occurred at a third site in 1995, and a population decline for this site was attributed to OHV activity (Heil and Melton 1995b, p. 17). However, vigorous plants were observed at this site with

ample flower production (UNHP 2010b, entire; Brunson 2010b, p. 1). The OHV use was not documented for the five remaining element occurrences or in the new *P. flowersii* site, but this does not necessarily mean OHV use does not occur there. Additionally, no other recreational uses were documented at *P. flowersii* sites.

In summary, OHV use may be negatively affecting individual plants at some sites, but this impact is localized and not rangewide. We identified OHV use in the species' habitat, but the plants are vigorous and retaining their ability to reproduce. Therefore, we believe that recreational activities are not threats to *Penstemon flowersii* now or for the foreseeable future.

(3) Oil and Gas Exploration and Development

Oil and gas exploration and development can impact *Penstemon flowersii* plants and their habitat (BLM 2008c, pp. 448–449). Within all mapped element occurrences of *P. flowersii,* there are four plugged and abandoned wells. All existing wells were plugged prior to 1999. As mentioned previously, plugged and abandoned wells involve surface disturbance for roads and well pads when they are constructed and during operation, but when they are abandoned they are reclaimed and do not receive regular traffic or disturbance (*see Astragalus hamiltonii,* Factor A, Oil and Gas Exploration and Development). There are two new proposed well locations within the species' mapped element occurrences—one well location that has an approved permit to drill and one well location that is not yet approved. Approved permits allow for well drilling, which will have associated negative impacts to vegetation, and potentially *P. flowersii,* during construction and drilling operations. These impacts have historically been localized and small in scale. We expect these impacts to continue to be minimal, considering that oil and gas development has occurred only minimally in *P. flowersii* habitat.

The lack of oil and gas development in *Penstemon flowersii* habitat is most likely because there is not enough product to be economically feasible with current technology (Doyle 2010, pers. comm.; Sparger 2010, pers. comm.) rendering dense energy developments unlikely in this area (BLM 2008c, p. 486). Although oil and gas development could potentially expand throughout *P. flowersii* habitat, substantial development is not likely for the next 20 years (BLM 2008c, p. 486), nor is it likely to occur across the entire range of *P. flowersii.* Thus, oil and gas exploration and development is not a threat to *P. flowersii* now or in the foreseeable future.

(4) Nonnative Invasive Species

We have limited information regarding the distribution of nonnative invasive species in *Penstemon flowersii* habitat. We know that invasive species, particularly *Bromus tectorum,* occur within *P. flowersii* habitat (Frates 2010, pp. 29–30). However, we do not have any information indicating that *B. tectorum* or other nonnative invasive species impact *P. flowersii.*

Soil disturbances can increase invasive species (*see Astragalus hamiltonii,* Factor A, Nonnative Invasive Species) (Evans *et al.* 2001, p. 1308). As noted above, *B. tectorum,* a major invasive plant species in the West, invades areas in response to surface disturbances (Hobbs 1989, pp. 389, 393, 395, 398; Rejmanek 1989, pp. 381–383; Hobbs and Huenneke 1992, pp. 324–325, 329, 330; Evans *et al.* 2001, p. 1308). Therefore, we assessed the potential for soil disturbances to increase nonnative invasive species in the foreseeable future in *Penstemon flowersii* habitat.

Agricultural use, livestock grazing, and oil and gas exploration and development are the predominant activities that disturb soils across the range of *Penstemon flowersii.* We determined that these activities are not extensive enough to threaten *P. flowersii* now or in the foreseeable future (*see* Agricultural Use/Livestock Grazing and Oil and Gas Exploration and Development). Thus, we also do not expect that these activities will increase surface disturbance to the point where invasive species will become established and impact *P. flowersii* to a significant degree. At this time, we have no information suggesting that nonnative invasive species are a threat to *P. flowersii* now or for the foreseeable future.

(5) Rural Residential Development

Conversion of land for rural residential development can result in the permanent loss and fragmentation of habitat for many species, including *Penstemon flowersii.* Impacts include, but are not limited to, crushed vegetation, compacted soils, introduced exotic plant species, reduced available habitat, and increased habitat fragmentation (Hansen *et al.* 2005, entire). For the purpose of this analysis, we define rural residential development as the expansion of rural towns and surrounding rural areas through low-density housing construction and related business and industrial development.

Duchesne and Uintah Counties, where *Penstemon flowersii* is found, had the highest (3.6 percent) and fourth highest (1.8 percent) population growth rates in Utah from 2008 to 2009, respectively (Utah Population Estimates Committee 2009, p. 2). The average population increase across the state of Utah was 1.5 percent over the same timeframe (Utah Population Estimates Committee 2009, p. 4). Roosevelt is the largest municipality that occurs near known *P. flowersii* habitat, and two smaller municipalities, Ballard and Myton, are nearby. The U.S. Census Bureau estimates that the population of Roosevelt increased approximately 12 percent from 2000 to 2009, with Ballard and Myton increasing 34 and 17 percent, respectively (U.S. Census Bureau 2010a, entire). Human population growth can destroy and fragment habitat as municipalities grow and incorporate more of what was once natural land.

Over the next 50 years, Duchesne and Uintah Counties are projected to grow at a slower rate of 1.1 percent (Utah Governor's Office of Planning and Budget (Utah GOPB) 2008, entire). At this growth rate, Daggett, Duchesne, and Uintah Counties (which are grouped together by the Utah Population Estimates Committee) are expected to increase from a current total population of 49,707 to 80,319 by 2060 (Utah GOPB 2008, entire). The City of Roosevelt projects a population of 6,600 by 2030, but they anticipate the population could be higher (City of Roosevelt 2010, p. 7). Much of the urban and rural development in the Uinta Basin is influenced by the boom and bust cycles of energy development, and another boom cycle could increase population growth over predictions.

Although municipalities are growing and are projected to increase near *Penstemon flowersii* habitat, they are not likely to impact a substantial amount of the known habitat of this species. The southern edge of Roosevelt's municipal boundary is approximately 0.2 mi (0.3 km) north of the northern boundary of element occurrence 1 (see Figure 2). The city limits of Ballard and Myton are immediately adjacent to element occurrences 1 and 9, with Ballard city limits overlapping element occurrence 6. None of these municipalities overlap with known sites of *P. flowersii.* Roosevelt will likely expand into an area already defined as an annexation area (City of Roosevelt 2010, p. 42), and this area is approximately 2 mi (3.2 km) north of element occurrence 9 and the

new site of *P. flowersii* on private land. Roosevelt and Ballard city limits are constrained by geography and Tribal boundaries, and neither are likely to expand substantially southward toward known *P. flowersii* sites (Eschler 2010, pers. comm.; Hyde 2010, pers. comm.).

In summary, rural residential development is occurring now and is likely to increase in the future, but most of this development would occur outside of *Penstemon flowersii* known sites. Therefore, we do not believe rural residential development is a significant threat to the species now or in the foreseeable future.

Summary of Factor A

Based on the best available information, we do not believe that conversion to agricultural use/livestock grazing, recreational activities, nonnative invasive species, oil and gas exploration and development, or rural residential development threaten *Penstemon flowersii* now or in the foreseeable future. Conversion to agricultural use most likely had an appreciable negative impact on *P. flowersii* historically, but we have no evidence that conversion to agricultural use continues today at a level that threatens the species. Likewise, livestock grazing is not widely noted across *P. flowersii* sites, and where it occurs it does not appear to negatively impact individuals. The OHV use, the only documented recreational activity in *P. flowersii's* habitat, is localized, and we do not have evidence that *P. flowersii* is considerably compromised or threatened by OHV use. We do not have information to support that nonnative invasive species are currently threatening *P. flowersii* or will be likely to do so in the foreseeable future. It is unlikely that current technologies and economic conditions will support substantial oil and gas development across *P. flowersii* habitat in the foreseeable future. Finally, rural residential development is unlikely to expand substantially into *P. flowersii* habitat. We find that the present or threatened destruction, modification, or curtailment of its habitat or range is not a threat to *P. flowersii* now or for the foreseeable future.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We are not aware of threats from overutilization or collection of *Penstemon flowersii* for commercial, recreational, scientific, or educational purposes, nor do we expect overutilization in the foreseeable future. *P. duchesnensis,* which is geographically near *P. flowersii,* is used horticulturally (Frates 2010, p. 75). However, *P. flowersii* is more obscure, and we have no evidence that this species is sought out for horticultural purposes (Frates 2010, p. 75). Therefore, we do not consider overutilization a threat to *P. flowersii* now or in the foreseeable future.

Factor C. Disease or Predation

Disease and herbivory by insects, wildlife, or livestock was documented for *Penstemon flowersii* on only one occasion: Caterpillars were feeding on *P. flowersii* plants near Midview Reservoir (Spencer 2010b, pers. comm.). We do not know how widespread this herbivory was or if it had detrimental effects on *P. flowersii;* caterpillars naturally feed on many plant species. The UNHP data did not note disease or herbivory for the species (UNHP 2010b, entire). With no data indicating otherwise, we do not consider disease or predation to be a threat to *P. flowersii* now or in the foreseeable future.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

There are no Federal or State laws that protect Penstemon flowersii. P. flowersii is found mostly on non-Federal lands, where no known regulatory mechanisms exist. However, we found that there are no threats to the species that warrant additional regulatory mechanisms (*see* Factors A, B, C, and E). Therefore, we do not consider the inadequacy of existing regulatory mechanisms as a threat to this species now or in the foreseeable future.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Natural and manmade threats to *Penstemon flowersii's* survival include: (1) Small population size and (2) climate change and drought.

(1) Small Population Size

Penstemon flowersii grows across an area of 80 mi^2 (*207 km^2*). P. flowersii individuals occur in well-defined populations that are geographically isolated from one another. Thus, this species may be prone to the negative effects of small population size, in part because historical fragmentation of habitat (*e.g.,* agricultural use) may have resulted in small populations with limited gene flow. *P. flowersii* also appears to have episodic growth patterns with large fluctuations in numbers from year to year (Franklin 2005, p. 131; 2010, p. 79). This fluctuation and patchy distribution may make *P. flowersii* more vulnerable to the impacts of small population size, limiting its ability to survive periods of low growth or recruitment.

The species' biology, distribution, and even our information gaps indicate that small population sizes may not significantly impact *Penstemon flowersii*. For example, *P. flowersii* grows vigorously and in moderate densities with evidence of good reproduction and recruitment (UNHP 2010b, entire; Brunson 2010b, p. 1). Although we still consider *P. flowersii* a narrow endemic, it occurs across a relatively large range. In addition, there are relatively large amounts of unsurveyed potential habitat between known sites that could result in an expanded species distribution and range.

Finally, we have not identified other surface-disturbing threats to this species that would cumulatively increase the risk of small population size. As previously discussed under Factor E for *Astragalus hamiltonii* (above), with no threats linked to a species' rarity, we do not consider rarity alone to be a threat. A species that has always been rare, yet continues to survive, could be well equipped to continue to exist into the future. Many naturally rare species have persisted for long periods within small geographic areas, and many naturally rare species exhibit traits that allow them to persist despite their small population sizes. Consequently, the fact that a species is rare does not necessarily indicate that it may be in danger of extinction in the foreseeable future. Thus, we believe that small population size is not a threat to *P. flowersii.*

(2) Climate Change and Drought

Potential impacts of climate change and drought to the geographic area are characterized in the Climate Change and Drought section under Factor E for *Astragalus hamiltonii* (above). *Penstemon flowersii* occurs within the same geographic vicinity as A. hamiltonii and, therefore, will be exposed to similar changes in climate and drought.

No trend data are available for *Penstemon flowersii* that would elucidate the relationship between the species' stability and climate variables. We do not know what causes fluctuations in *P. flowersii* abundance, but if it is due to environmental factors like precipitation or temperature, climate change could negatively affect this species. However, because of the lack of available data, any predictions are speculative.

We expect that *Penstemon flowersii,* like other narrow endemics, may be negatively affected by climate change and drought. However, despite climate changes that have occurred over the past 30 years, we have no evidence that *P. flowersii* populations are declining, and we have no basis to predict how this species will respond in the future to climate change. Over the past 30 years, plant health remains normal to vigorous, and reproduction and recruitment continue to occur at some *P. flowersii* element occurrences (UNHP 2010b, entire). We have not identified other threats to this species, such as mining, that would cumulatively exacerbate the threat of climate change. Based upon the best available information, we do not believe that climate change is a threat now or is likely to become one in the foreseeable future.

Summary of Factor E

We assessed the potential risks of small population size, climate change, and drought to *Penstemon flowersii*. There is no evidence that the species' small population size is a threat to *P. flowersii*. The species is adapted to a landscape where drought naturally occurs, and we have no information indicating that the species is threatened by climate change. In addition, as described in Factor A, there are no threats to the species that would result in significant loss or fragmentation of available habitat, and thus there are no cumulative effects to exacerbate the threat of climate change or small population sizes. Therefore, based on the best scientific and commercial information available at this time, we conclude that natural or manmade factors are not threats to *P. flowersii* now or for the foreseeable future.

Finding

As required by the ESA, we conducted a review of the status of the species and considered the five factors in assessing whether *Penstemon flowersii* is endangered or threatened throughout all or a significant portion of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by *P. flowersii*. We reviewed the petition, information available in our files, other available published and unpublished information, and we consulted with recognized *P. flowersii* experts and other Federal, State, and Tribal agencies.

The factor with potentially the most impact on *Penstemon flowersii* was historical agricultural development. Site visits show plants persist in pasture lands (Holmgren 2009 pers. comm. in Frates 2010, p. 35; Brunson 2010b, p. 1), and we have little evidence that conversion to agricultural use is an ongoing threat to this species. Livestock do not appear to forage on *P. flowersii,* and the species occurs in grazing pastures. Rural residential development is another factor that could potentially destroy and fragment this species and its habitat in the future, but it is unlikely to occur at a high level across *P. flowersii's* known range. Other factors affecting *P. flowersii*—including recreational activities, nonnative invasive species, oil and gas development, and small population size—are either limited in scope, or we do not have evidence that supports these factors adversely impacting the species as a whole. We have no evidence that overutilization, disease, and predation are affecting this species. Although climate change will likely impact the species, we do not have any information that indicates it threatens the continued existence of *P. flowersii.* Finally, because none of these factors rises to the level of a threat that would warrant additional regulatory mechanisms, the inadequacy of regulatory mechanisms does not negatively affect *P. flowersii*.

Based on our review of the best available scientific and commercial information pertaining to the five factors, we find that the factors analyzed above are not of sufficient imminence, intensity, or magnitude to indicate that *Penstemon flowersii* is in danger of extinction (endangered), or likely to become endangered within the foreseeable future (threatened) throughout all or a significant portion of its range. Therefore, we find that listing *P. flowersii* as threatened or endangered species is not warranted throughout its range.

Significant Portion of the Range

Having determined that *Penstemon flowersii* does not meet the definition of threatened or endangered species, we must next consider whether there are any significant portions of the range where *P. flowersii* is in danger of extinction or are likely to become endangered in the foreseeable future. *See* the *Significant Portion of the Range* section under *Astragalus hamiltonii* (above) for a summary of our interpretation of the meaning of "in danger of extinction throughout all or a significant portion of its range."

We have no evidence that any particular population or portion of the range of *Penstemon flowersii* is critical to the species' survival. Because our understanding of the species' distribution is incomplete and population counts fluctuate widely, we cannot determine that any one element occurrence is more critical to the species' survival (i.e., has a significant portion of individuals) than another. Additionally, potential threats to the species appear to be uniform throughout *P. flowersii's* range. Therefore, we do not find that *P. flowersii* is in danger of extinction now, nor is it likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Therefore, listing *P. flowersii* as threatened or endangered under the ESA is not warranted at this time.

We request that you submit any new information concerning the status of, or threats to, *Penstemon flowersii* to our Utah Ecological Services Field Office (*see* **ADDRESSES** section) whenever such information becomes available. New information will help us monitor *P. flowersii* and encourage its conservation. If an emergency situation develops for *P. flowersii,* or any other species, we will act to provide immediate protection.

Species Information—Eriogonum soredium and Lepidium ostleri

Eriogonum soredium and *Lepidium ostleri* occur in the same habitat and have the same distribution. Therefore, we discuss these species together for purposes of this finding.

Taxonomy and Species Description

Eriogonum soredium

Eriogonum soredium is a low mound-forming perennial plant in the buckwheat family (Polygonaceae) that is 0.8 to 1.6 in (2 to 4 cm) tall and 3.9 to 19.7 in (10 to 50 cm) across (Welsh *et al.* 2008, p. 588). The leaves are 0.08 to 0.2 in (2 to 5 mm) long, 0.03 to 0.08 in (0.7 to 2 mm) wide, round to oval, and covered on both surfaces by short, white, wooly hairs (Welsh *et al.* 2008, p. 588). The numerous flowers are arranged in tight clusters resembling drumsticks. Individual flowers are white or partially pink and 0.08 to 0.12 in (2 to 3 mm) long (Welsh *et al.* 2008, p. 588). Flowering generally occurs from June to August. The seeds, which are 0.08 to 0.10 in (2 to 2.5 mm) long, mature from July through September (Welsh *et al.* 2008, p. 588).

Eriogonum soredium was first described in 1981 by James Reveal based on a collection by Stan Welsh and Matt Chatterly (Reveal 1981, entire; Kass 1992a, p. 1). *E. soredium* has not undergone any taxonomic revisions since it was originally described. Therefore, we accept the current taxonomy as an indication that the

species constitutes a listable entity under the ESA.

Lepidium ostleri

Lepidium ostleri is a long-lived perennial herb in the mustard family (Brassicaceae). It grows in dense cushion-like tufts up to 2 in (5 cm) tall (Welsh *et al.* 2008, p. 328). The grayish-green hairy leaves are 0.16 to 0.59 in (4 to 15 mm) long, generally linear, and entire or with lobed basal leaves (Welsh *et al.* 2008, p. 328). Flowering stalks are approximately 0.39 in (1 cm) long with 5 to 35 flowers that are white or have a purple tint (Welsh *et al.* 2008, p. 328). Flowering generally occurs from June to early July, followed by fruit set from July to August (Welsh *et al.* 2008, p. 328).

Lepidium ostleri was first described in 1980 by Stan Welsh and Sherel Goodrich based on a collection by Stan Welsh and Matt Chatterly (Welsh and Goodrich 1980, entire; Kass 1992b, p. 1). *L. ostleri* has not undergone any taxonomic revisions since it was originally described. We are accepting the current taxonomy and consider *L. ostleri* a listable entity under the ESA.

Distribution and Population Status

Eriogonum soredium and *Lepidium ostleri* are each known from four distinct, overlapping populations on private lands in the southern San Francisco Mountains in Beaver County, Utah—the Grampian Hill, Cupric Mine, Copper Gulch, and Indian Queen populations (Figure 3; Miller 2010g, p. 6; Roth 2010a, pp. 1–2). We are not aware of any additional populations. Surveys were conducted on BLM lands adjacent to the known populations in 2010, and no plants or habitat were found (Miller 2010g, Appendix B and p. 6; Roth 2010a, pp. 1–3); these adjacent areas do not contain Ordovician Limestone, the substrate that supports both *E. soredium* and *L. ostleri* (*see* Habitat section below) (Miller 2010g, p. 6). Similarly, no additional populations of either species were found during surveys of the San Francisco Mountains and surrounding ranges (including the Wah Wah Mountains, Crystal Peak, the Confusion Range, and the Mountain Home Range) (Kass 1992a, p. 5; Kass 1992b, p. 4; Evenden 1998, p. 5; Robinson 2004, p. 16; Miller 2010c, entire; Roth 2010a, pp. 2–3).

There were reports of two populations of *E. soredium* in the Wah Wah Mountains; however, we do not believe these reports are accurate—one report appears to have incorrect location information (Kass 1992a, p. 5; Franklin 2005, p. 85) and the other report appears to be a species misidentification (Robinson 2004, p. 16; Roth 2010a, p. 3). Therefore, reports of these two populations are thought to be erroneous and are not discussed further in this finding.

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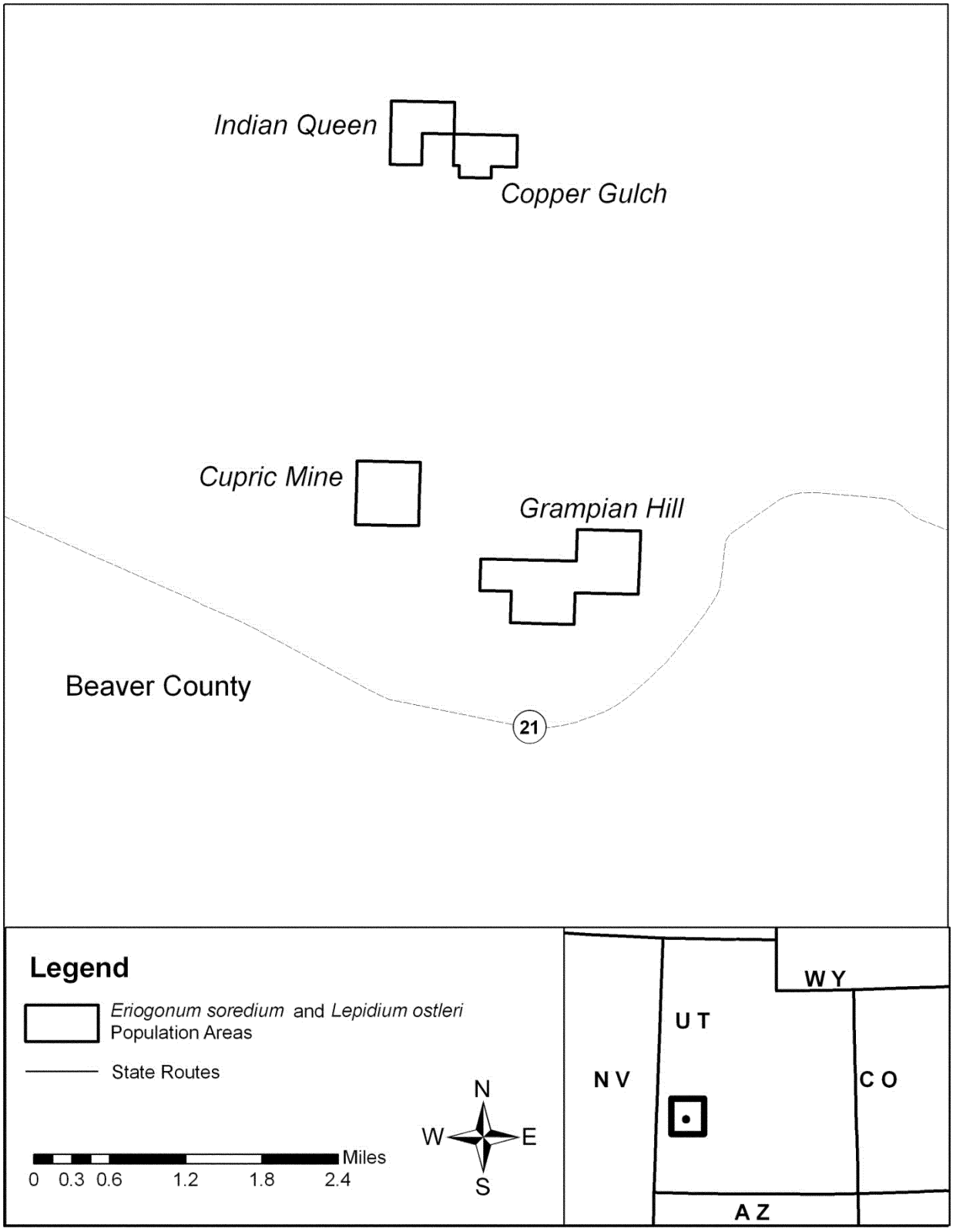

Figure 3. *Eriogonum soredium* and *Lepidium ostleri* range.

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Eriogonum soredium and *Lepidium ostleri* are distributed across a total range of less than 5 mi^2 (13 km^2). Previous estimates of the species' total occupied habitat ranged from 170 acres (ac) (69 hectares (ha)) (Evenden 1998, Appendix C) to 400 ac (160 ha) (Kass 1992a, pp. 7–8; 1992b, p. 7). However, we now have more accurate global positioning system information that shows the two species' total occupied habitat is approximately 52 ac (21 ha)

(based on Miller 2010g, Appendix B). For both species, each of the four known populations are estimated to occupy habitat ranging between 5 ac (2 ha) and 29 ac (12 ha), with localized high densities of plants (Evenden 1989, Appendix C; Miller 2010g, Appendix B).

All known *Eriogonum soredium* and *Lepidium ostleri* populations are located on private lands (Miller 2010g, p. 6; Roth 2010a, pp. 1–2). Their occurrence on these private lands hinders our ability to collect accurate long-term population count or trend information because of access limitations. The populations were visited sporadically over the last couple of decades; however, we have no information on sampling methods used by individual surveyors. Common field techniques used to estimate population size tend to be highly subjective in the absence of actual population counts. Population estimates also may be skewed by how the species grow. Both species grow in low, mound-forming clusters, making it difficult to distinguish individual plants—some observers may assume each cluster is one plant and other observers might apply a multiplier to each cluster to count them as multiple plants; therefore, using either of these methods would greatly skew the resulting population estimate. We believe these biases help explain the seemingly large fluctuations in numbers of plants observed during different surveys (*see* below); *E. soredium* and *L. ostleri* are robust, long-lived perennial plants that are unlikely to exhibit such extreme population fluctuations (Garcia *et al.* 2008, pp. 260–261).

Accordingly, the available population estimates are highly variable and probably not accurate. For *Eriogonum soredium,* available population estimates range from a low of 10 to 100 plants in 2004 to a high of 76,000 to 81,000 individuals in 2010 (Kass 1992a, p. 8; Evenden 1998, Appendix C; Robinson 2004, pp. 11–15; Miller 2010a, pers. comm.; Miller 2010b, pers. comm.; Miller 2010c, pp. 2–5; Roth 2010a, p. 4). For *Lepidium ostleri,* available population estimates range from a total of 700 individuals (Kass 1992b, p. 8) to approximately 17,000 individuals in the 1990s (Evenden 1998, Appendix C). Currently, the total number of *L. ostleri* plants is estimated at approximately 43,000 (Miller 2010a, pers. comm.; Miller 2010c, pp. 2–5; Roth 2010a, p. 4). However, due to the aforementioned survey inaccuracies, we are not able to determine accurate population estimates or trends for either species. In 2010, both species were documented at all four known populations (Miller 2010g, entire).

We lack demographic information, which is measured by studying the size, distribution, composition, and changes within a specified population over time.

Habitat

Eriogonum soredium and *Lepidium ostleri* are narrow endemics restricted to soils derived from Ordovician limestone outcrops (Evenden 1998, p. 5). There are approximately 845 ac (342 ha) of Ordovician limestone outcrops in the San Francisco Mountains (Miller 2010g, Appendix F). In addition, there are 719 ac (291 ha) of Cambrian dolomite substrates in the San Francisco Mountains; there is the potential for small "islands" of Ordovician limestone outcrops to occur within these substrates (Miller 2010g, Appendix F, p. 7).

Ordovician limestone is rare within a 50-mi (80-km) radius of the San Francisco Mountains (Miller 2010g, Appendix F). Cambrian dolomite substrates are present in the Wah Wah Mountains to the west of the San Francisco Mountains (Miller 2010g, Appendix F). However, as previously described (see Distribution and Population Status), there is no indication that additional populations of either species occur in these areas.

We do not know if there are other limiting factors associated with the limestone formations that restrict the habitat use and distribution of these species—these species occupy only a fraction of the available habitat and are known to occur on only 52 ac (21 ha), or just 6 percent, of the available Ordovician limestone outcrops.

Eriogonum soredium and *Lepidium ostleri* are associated with pinion-juniper and sagebrush communities between 6,200 and 7,228 ft (1,890 and 2,203 m) in elevation. They are typically found on sparsely vegetated exposed slopes with *Ephedra* sp. (Mormon tea), *Gutierrezia sarothrae* (snakeweed), *Cercocarpus intricatus* (dwarf mountain-mahogany), and *Petradoria pumila* (rock goldenrod). Associated rare species include *Trifolium friscanum.*

Life History

We do not have a clear understanding of the reproductive biology or life history of *Eriogonum soredium,* but recruitment appears to be low or perhaps episodic (Kass 1992a, p. 7; Roth 2010a, p. 1). Juvenile plants and seedlings have been observed in only two of the four populations (Miller 2010g, p. 4). In 2010, dead or partially dead plants were found throughout all populations, but we have no information on the cause of death or the approximate number of dead plants (Miller 2010g, p. 4).

No information is available on the life history of *Lepidium ostleri.*

Summary of Information Pertaining to the Five Factors—*Eriogonum soredium* and *Lepidium ostleri*

In making our 12-month finding on the petition, we considered and evaluated the best available scientific and commercial information pertaining to *Eriogonum soredium* and *Lepidium ostleri* in relation to the five factors provided in section 4(a)(1) of the ESA (*see* the full description of these five factors in the Summary of Information Pertaining to the Five Factors—*Astragalus hamiltonii,* above). *E. soredium* and *L. ostleri* co-occur in the same habitat and, therefore, are addressed together in the Five Factor Analysis below.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Their Habitat or Range

The following factors may affect the habitat or range of *Eriogonum soredium* and *Lepidium ostleri:* (1) Livestock grazing, (2) recreational activities, (3) mining, and (4) nonnative invasive species.

(1) Livestock Grazing

Potential impacts of livestock grazing to plants are discussed above in the Livestock Grazing section under Factor A for *Astragalus hamiltonii.* As previously stated, all populations of *Eriogonum soredium* and *Lepidium ostleri* occur on private lands.

We have no information on livestock grazing management on private lands, but adjacent BLM lands belong to active grazing allotments (Galbraith 2010, pers. comm.). Adjacent private lands are subject to the same grazing practices as the allotted BLM land if they are not fenced (Galbraith 2010, pers. comm.). Private lands in the San Francisco Mountains are only partially fenced; hence, livestock may have access to areas where *E. soredium* and *L. ostleri* occur. However, impacts to *E. soredium* or *L. ostleri* from livestock grazing have not been documented (Kass 1992a and 1992b, entire; Evenden 1998, entire; Miller 2010g, p. 5; Roth 2010a, p. 1).

Based on our review of the available information, there is no indication that grazing impacts the species now or will impact the species in the foreseeable future at a level that threatens *E. soredium* or *L. ostleri.*

(2) Recreational Activities

Potential impacts of recreational activities to plants are discussed above

in the Recreational Activities section under Factor A for *Astragalus hamiltonii.* There are no known impacts of OHV use in *Eriogonum soredium* and *Lepidium ostleri* occupied habitats (Miller 2010f, pers. comm.; Roth 2010a, pp. 1–2). Access to the majority of the occupied habitat, which occurs on private lands, is posted as closed to all vehicles, including OHVs (Miller 2010g, p. 5). The OHV use does not appear to impact adjacent BLM lands in the San Francisco Mountains (Pontarolo 2009, pers. comm.). Therefore, we have no information indicating that recreational activities threaten *E. soredium* and *L. ostleri* now nor do we anticipate these activities will become a threat in the foreseeable future.

(3) Mining

Mining activities occurred historically throughout the range of *Eriogonum soredium* and *Lepidium ostleri* and continue to impact these species. Mining activities can impact *E. soredium* and *L. ostleri* by removing habitat substrate, increasing erosion potential, fragmenting habitat through access road construction, degrading suitable habitat, and increasing invasive plant species (Brock and Green 2003, p. 15; BLM 2008c, pp. 448–449). Impacts to *E. soredium* and *L. ostleri* individuals include crushing and removing plants, reducing plant vigor, and reducing reproductive potential through increased dust deposits, reduced seedbank quantity and quality, and decreased pollinator availability and habitat (Brock and Green 2003, p. 15; BLM 2008c, pp. 448–449).

The San Francisco Mountains have an extensive history of precious metal mining activity (Evenden 1998, p. 3). All four of the known populations and much of the species' potential habitat were impacted by precious metal mining activities in the past, as evidenced by a high density of mine shafts, tailings, and old mining roads throughout the habitat of *Eriogonum soredium* and *Lepidium ostleri* (Table 3; Kass 1992a, p. 10; Evenden 1998, p. 3; Roth 2010a, p. 2).

The eastern part of the Grampian Hill population surrounds old mine shafts associated with the King David Mine, which is part of the historical Horn Silver Mine. The Horn Silver Mine was one of the largest silver mines in the country until it collapsed in 1885 (Murphy 1996, p. 1; Evenden 1998, p. 3). The Cupric Mine population is located immediately above a mine shaft associated with the Cupric Mine, a historical copper mine. Old mine shafts are located within 0.3 mi (0.5 km) of the Copper Gulch population; these mine shafts are associated with the Cactus Mine, also a historical copper mine. Two mine shafts are located within the Indian Queen population and three additional mine shafts are located immediately adjacent to this population. These mine shafts also are part of the historical Cactus Mine.

TABLE 3—MINING ACTIVITIES IN THE HABITAT OF *Eriogonum Soredium* AND *Lepidium Ostleri*

Population	Mining activity		
	Historical	Current	Future
Grampian Hill	silver, lead, copper, zinc (Horn Silver Mine)	None	silver, lead, copper, zinc, landscape gravel quarrying.
Cupric Mine	silver, lead, copper, zinc, gravel quarrying (Cupric Mine).	gravel quarrying	silver, lead, copper, zinc, landscape gravel quarrying.
Copper Gulch	silver, lead, copper, zinc, gravel quarrying (Cactus Mine).	gravel quarrying	silver, lead, copper, zinc, landscape gravel quarrying.
Indian Queen	silver, lead, copper, zinc, gravel quarrying (Cactus Mine).	gravel quarrying	silver, lead, copper, landscape gravel quarrying.

Large-scale precious metal mining ceased decades ago. However, all precious metal mining claims in the southern San Francisco Mountains are patented (a claim for which the Federal Government has passed its title to the claimant, making it private land) and continued occasional explorations for silver, zinc, and copper deposits are reported for the area (Bon and Gloyn 1998, p. 12; Franconia Minerals Corporation 2002, p. 1; Rupke 2010, pers. comm.). In fact, in 1998 this area was one of the most active precious metal exploration areas in the State (Bon and Gloyn 1998, pp. 11–12). In addition, exploration activities were reinitiated at the Horn Silver Mine in 2002, confirming that extensive amounts of sphalerite (the major ore of zinc) remain in the mine (Franconia Minerals Corporation 2002, p. 1).

We expect the demand for silver and copper to increase in the future (Crigger 2010, pp. 1–2; Murdoch 2010, pp. 1–2). The price for silver nearly tripled over the last decade (Stoker 2010, p. 2). The market for silver is expected to grow in the future due to its high demand for industrial uses in solar panel construction, wood preservatives, and medical supplies (Ash 2010, p. 1). Since 2009, the value of copper increased more than 140 percent (Crigger 2010, pp. 1–2; Murdoch 2010, pp. 1–2). The market for copper, one of the world's most widely used industrial metals, is expected to increase in the future due to demand for electrical wiring, plumbing, and car fabrication (Crigger 2010, pp. 1–2; Murdoch 2010, pp. 1–2). In Utah, precious metals accounted for approximately 14 percent of the total value of minerals produced in 2009 (up from 8 percent in 2008) (Utah GOPB 2010, pp. 195–196). Utah's precious metal gross production value increased $221 million (57 percent) compared to 2008, due to increased production of both gold and silver (Utah GOPB 2010, p. 196). Because the San Francisco Mountains area was one of the most productive areas during the last large-scale precious metal mining efforts, it is reasonable to assume that it will become important again, particularly given the ongoing exploration activities at the mines.

As previously described, *Eriogonum soredium* and *Lepidium ostleri* are endemic to soils derived from Ordovician limestone. In addition to precious metals, this formation is mined for crushed limestone. The limestone is removed from quarry sites and sold for marble landscaping gravel.

Marble landscaping gravel quarries in *Eriogonum soredium* and *Lepidium ostleri's* range are open-pit mines that result in the removal of the habitat substrate for these species. Four active limestone quarry sites occur within a couple hundred feet of three of the species' populations—Cupric Mine, Copper Gulch, and Indian Queen populations (Table 3).

A limestone quarry is considered active from the time quarrying begins until the site is reclaimed. Generally, gravel pits are maintained below 5 ac (2 ha) of surface disturbance to avoid

large mine status, which requires permitting (Munson 2010, pers. comm.). Hence, an area may contain many quarries at or below the 5-ac (2-ha) threshold, all of which may be considered active (Munson 2010, pers. comm.). A mine also may stay below 5 ac (2 ha) as long as previously disturbed areas at the quarry site are reclaimed prior to expanding quarrying operations (Munson 2010, pers. comm.). The Cupric Mine, Copper Gulch, and Indian Queen populations of *Eriogonum soredium* and *Lepidium ostleri* all have small individual gravel pits—resulting in a lack of environmental analyses and potential mitigation opportunities (*see* Factor D, *Inadequacy of Existing Regulatory Mechanisms*).

As stated in the Distribution and Population Status section above, *Eriogonum soredium* and *Lepidium ostleri* occur in the same overlapping locations, each occupying a total of 52 ac (21 ha) in four populations. We estimate the quarries at the three population sites (Cupric Mine, Copper Gulch, and Indian Queen) historically resulted in the loss of 26 ac (11 ha) of suitable habitat adjacent to currently known plant locations (Table 4; Darnall *et al.* 2010, entire). Based on habitat similarities and proximity, it is likely that the plant occupied the entire 26 ac (11 ha) that are now being quarried. There are 23 ac (9 ha) of remaining occupied habitat in the three populations (Table 4; Darnall *et al.* 2010, entire), but these areas are at risk of being impacted by the gravel pits. The only population not impacted by gravel pits—the Grampian Hill population—is 29 ac (12 ha) in size. Even so, the Grampian Hill population is only 1 mi (1.6 km) away from the nearest gravel pit and, as previously discussed, it is impacted by precious metal mining.

TABLE 4—AREAS OF SURFACE DISTURBANCE ASSOCIATED WITH GRAVEL MINING IN THE VICINITY OF *Eriogonum Soredium* AND *Lepidium Ostleri* POPULATIONS

Population	Occupied area	Adjacent surface disturbance
Indian Queen	9 ac (3.6 ha)	14 ac (5.7 ha).
Copper Gulch	5 ac (2.0 ha)	5 ac (2.0 ha).
Cupric Mine	9 ac (3.6 ha)	7 ac (2.8 ha).
Total	23 ac (9.2 ha)	26 ac (10.5 ha).

Quarrying is occurring in the immediate vicinity of the Cupric Mine population (Evenden 1998, p. 5; Robinson 2004, p. 8; Frates 2006, pers. comm.; Roth 2010a, p. 2; Miller 2010e, pers. comm.; Munson 2010, pers. comm.); we anticipate this mining activity will continue to impact this population in the near future (Roth 2010a, p. 2). The estimated area of occupied habitat of the Cupric Mine population in the vicinity of this gravel pit is 9 ac (4 ha) (Table 4; Darnall *et al.* 2010, entire), while gravel mining has resulted in surface disturbance of approximately 7 ac (3 ha) (Table 4; Darnall *et al.* 2010, entire). No quarrying activity was observed in the vicinity of the Copper Gulch and Indian Queen populations in 2010; however, the gravel pits are still considered active and thus additional gravel mining could occur at any time. For both of these populations (Copper Gulch and Indian Queen), adjacent surface disturbance is equal to or greater than the remaining occupied habitat (Table 4; Darnall *et al.* 2010, entire).

It is important to note that all of the active quarries are near or above the 5-ac (2-ha) regulatory limit. Thus, we anticipate that the operators will file for large mine permits, partially restore the disturbed areas to be below the 5-ac (2-ha) limit, or will begin new gravel pits (Munson 2010, pers. comm.). Under any of these scenarios, it is likely that occupied habitats of *Eriogonum soredium* and *Lepidium ostleri* will be impacted, particularly given the ongoing need for limestone gravel in nearby communities, as described below.

Between 1995 and 2001, the production of building and landscaping stones in Utah jumped nearly 700 percent (Stark 2008, p. 1). Construction sand, gravel, and crushed stone production rank as the second most valuable commodity produced among industrial minerals in Utah (Bon and Krahulec 2009, p. 5). The use of landscape gravel will likely continue to increase in nearby Washington County, which is one of the fastest growing counties in the United States and Utah (U.S. Census Bureau 2010b, entire; Utah GOPB 2010, p. 48). The Washington County population has doubled every 10 years since 1970. In 2009, there were 145,466 people estimated to live in Washington County (Utah GOPB 2010, p. 49). Over 700,000 people are expected to live in Washington County by 2050 (Utah GOPB 2008, entire). Based on the projected population growth for Washington County, we believe that the regional demand for landscape gravel will continue to increase in southwestern Utah in the foreseeable future.

Much of the rock quarried in Utah does not travel far because of the associated high cost of transport (Stark 2008, p. 1). The quarries of the southern San Francisco Mountains are the closest quarries providing crushed limestone for southwestern Utah, including Washington County (Mine Safety and Health Administration 2010, p. 1). In addition to regional distribution, crushed limestone quarried from the vicinity of the Copper Gulch, Indian Queen, and Cupric Mine populations is transported to a distribution center for the Home Depot in the nearby town of Milford, where it is packaged and shipped nationwide (Munson 2010, pers. comm.).

To summarize, mining throughout *Eriogonum soredium* and *Lepidium ostleri's* range reduced available habitat and impacted the species' populations in the past (Table 3; Table 4). All four populations of *Eriogonum soredium* and *Lepidium ostleri* co-occur with precious metal mining activities. For both species, three of the four populations—the Cupric Mine, Copper Gulch, and Indian Queen populations—co-occur with active gravel mining pits.

Available information suggests that all populations are likely to be impacted by precious metal and gravel mining in the foreseeable future based on mineral availability and market projections. Therefore, we have determined that mining is a threat to *E. soredium* and *L. ostleri* now and in the foreseeable future.

(4) Nonnative Invasive Species

Potential impacts of nonnative invasive species to native plants and their habitat are discussed above in the Nonnative Invasive Species section under Factor A for *Astragalus hamiltonii. Bromus tectorum* is

considered the most ubiquitous invasive species in the Intermountain West due to its ability to rapidly invade native dryland ecosystems and outcompete native species (Mack 1981, p. 145; Mack and Pyke, 1983, p. 88; Thill *et al.* 1984, p. 10).

Bromus tectorum is a dominant species on the lower slopes of the Grampian Hill population and is present in all populations of *Eriogonum soredium* and *Lepidium ostleri* (Miller 2010g, p. 5; Roth 2010a, p. 1). Surface disturbances can increase the occurrence and densities of *B. tectorum* (*see* Nonnative Invasive Species section under Factor A for *Astragalus hamiltonii*). As previously described, increased mining activities and associated surface disturbances are expected to occur in the occupied habitat for *E. soredium* and *L. ostleri,* (*see* Mining, above), providing conditions allowing *B. tectorum* to expand into and increase density within *E. soredium* and *L. ostleri* habitat.

Invasions of annual, nonnative species, such as *Bromus tectorum,* are well documented to contribute to increased fire frequencies (Brooks and Pyke 2002, p. 5; Grace *et. al* 2002, p. 43; Brooks *et. al* 2003, pp. 4, 13, 15). The disturbance caused by increased fire frequencies creates favorable conditions for increased invasion by *B. tectorum.* The end result is a downward spiral where an increase in invasive species results in more fires, more fires create more disturbances, and more disturbances lead to increased invasive species densities. The risk of fire is expected to increase from 46 to 100 percent when the cover of *B. tectorum* increases from 12 to 45 percent or more (Link *et al.* 2006, p. 116). In the absence of exotic species, it is generally estimated that fire return intervals in xeric sagebrush communities range from 100 to 350 years (Baker 2006, p. 181). In some areas of the Great Basin (Snake River Plain), fire return intervals due to *B. tectorum* invasion are now between 3 and 5 years (Whisenant 1990, p. 4). Most plant species occurring within a sagebrush ecosystem are not expected to be adapted to frequent fires, as evidenced in the lack of evolutionary adaptations found in other shrub-dominated fire adapted ecosystems like chaparral (Baker, in press, p. 17).

In the absence of *Bromus tectorum, Eriogonum soredium* and *Lepidium ostleri* grow in sparsely vegetated communities unlikely to carry fires (see Habitat section). Thus, the species are unlikely to be adapted to survive fires. As described in the distribution section, the total range of these species are less than 5 mi^2 (13 km^2) and each of the four populations occupy relatively small areas ranging between 5 ac (2 ha) and 29 ac (12 ha). A range fire could easily impact, or eliminate, one or all populations. Therefore, the potential expansion of invasive species and associated fire is a threat to the species, especially when considering the limited distribution of the species and the high potential of stochastic extinctions (as discussed in the Small Population Size section under Factor E below).

In summary, nonnative invasive species and fire are threats to both species. *Bromus tectorum* occurs in all four *Eriogonum soredium* and *Lepidium ostleri* populations. Given the ubiquitous nature of *B. tectorum* in the Intermountain West and its ability to rapidly invade dryland ecosystems (Mack 1981, p. 145, Mack and Pyke, 1983, p. 88, Thill *et al.* 1984, p. 10), we expect it to increase in the future in response to surface disturbances from increased mining activities and global climate change (*see* the Climate Change and Drought section under Factor E for *Astragalus hamiltonii*). An increase in *B. tectorum* is expected to increase the frequency of fires in *E. soredium* and *L. ostleri's* habitat, and the species are unlikely to survive increased wildfires due to their small population sizes. Therefore, we determine that nonnative invasive species and associated wildfires constitute a threat to all populations of *E. soredium* and *L. ostleri* now and into the foreseeable future.

Summary of Factor A

At this time, based on best available information, we do not believe that grazing and recreational activities significantly threaten *Eriogonum soredium* and *Lepidium ostleri* now or in the foreseeable future. However, we determine that mining and nonnative invasive species are threats to *E. soredium* and *L. ostleri.*

Mining activities impacted *Eriogonum soredium* and *Lepidium ostleri* habitat in the past and continue to be a threat to the species and its habitat throughout its range. All of the populations and the majority of habitat are located on private lands with an extensive history and recent successful exploration activities for precious metal mining. Three of the four populations are located in the immediate vicinity of gravel mining. Gravel mining is expected to continue and expand in the near future (Munson 2010, pers. comm.). Considering the small acreages of occupied habitat immediately adjacent to existing gravel pits, continued mining may result in the loss of these populations in the foreseeable future. We anticipate an increase in the demand for precious metals and landscape rock based on the economic outlook for these commodities and the lack of alternative sources for crushed limestone in southwestern Utah which will result in increased impacts to *E. soredium* and *L. ostleri* and their habitat.

Bromus tectorum is documented to occur in all four populations of *Eriogonum soredium* and *Lepidium ostleri.* The threat of fire caused by annual nonnative species invasions is exacerbated by mining activities and global climate change (*see* the Climate Change and Drought section under Factor E). The small population sizes and extremely limited distribution make this species especially vulnerable to stochastic extinction events, including localized mining activities and wildfires caused by increased invasions of nonnative species (*see* the Small Population Size section under Factor E, below).

Therefore, we find that *Eriogonum soredium* and *Lepidium ostleri* are threatened by the present or threatened destruction, modification, or curtailment of the species' habitat or range, now and in the foreseeable future, based on impacts from mining activities and nonnative invasive species.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Eriogonum soredium and *Lepidium ostleri* are considered attractive rock garden plants. In particular, *Eriogonum soredium* is considered "one of the most fantastic of its genus" by a major rock garden seed distributor (Alplains Seed Catalog 2010b, pp. 2 and 12). Seeds for both species are available commercially and they are harvested from wild populations (Alplains Seed Catalog 2010b, pp. 2 and 12).

Eriogonum soredium and *Lepidium ostleri* plants are located on private lands, which may provide some protection from collectors, as access is restricted on these private lands. Despite the attractiveness of the two species to horticultural enthusiasts, we have no information indicating that collection in the wild is a threat to the species.

In summary, overutilization for commercial purposes could be a concern to *Eriogonum soredium* and *Lepidium ostleri* due to their desirability to collectors; however, we do not have information that leads us to believe that overutilization for commercial purposes is a threat now or is likely to become one in the foreseeable future.

Factor C. Disease or Predation

Disease and herbivory of the species are unknown. We do not have any information indicating that disease is impacting either *Eriogonum soredium* or *Lepidium ostleri*. We also do not have any information indicating herbivory is occurring from livestock (*see* the Livestock Grazing section under Factor A), wildlife, or insects (Kass 1992a, p. 9; Evenden 1998, entire; Miller 2010a, entire; Miller 2010b, entire; Miller 2010c, entire; Roth 2010a, entire). Thus, we do not consider disease and predation to be threats to these species.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

There are no endangered species laws protecting plants on private, State, or Tribal lands in Utah. *Eriogonum soredium* and *Lepidium ostleri* are listed as bureau sensitive plants for the BLM. Should the species be located on BLM lands, limited policy-level protection by the BLM is afforded through the Special Status Species Management Policy Manual # 6840, which forms the basis for special status species management on BLM lands (BLM 2008e, entire).

Eriogonum soredium and *Lepidium ostleri* are predominantly threatened by mining related activities (*see* Factor A). Over 90 percent of the species' known potential habitat and all of the known populations are located on lands with private, patented mining claims (Kass 1992a, p. 9; Evenden 1998, p. 9; Roth 2010a, pp. 1–2). Mineral mining is subject to the Utah Mined Land Reclamation Act of 1975, which includes mineral mining on State and private lands, including lands with patented mining claims (Utah Code Title 40, Chapter 8). The ESA applies to all surface activities associated with the exploration, development, and extraction of mineral deposits.

The Utah Mined Land Reclamation Act mandates the preparation of State environmental impact assessments for large mining operations, which are defined as mining operations which create more than 5 ac (2 ha) of surface disturbance (UDOGM 2010b, p. 1). The existing gravel mining activities within the range of *Eriogonum soredium* and *Lepidium ostleri* (*see* Factor A, Mining) are approaching the 5-ac (2-ha) regulatory threshold. Thus, we anticipate that the operators will file for large mine permits, partially restore the disturbed areas to be below the 5-ac (2-ha) limit, or will begin new gravel pits (Munson 2010, pers. comm.).

State environmental impact assessments must address, at a minimum, the potential effects on State and federally listed species (Baker 2010, pers. comm.). *Eriogonum soredium* and *Lepidium ostleri* are not State listed but are on the BLM sensitive species list. If UDOGM is made aware of these rare species being impacted by mining activities, they could consider minimizing and mitigating impacts; however, there is no requirement to address species that are not federally listed in the mine permitting process (Baker 2010, pers. comm.).

In summary, the existing regulatory mechanisms are not adequate to protect *Eriogonum soredium* and *Lepidium ostleri* from becoming threatened or endangered by gravel mining on private lands. The active gravel pits are approaching the 5-ac (2-ha) threshold that would normally incur regulatory environmental impact assessments; however, no assessments are completed for these mines. Even if an environmental impact assessment is completed for any of the mines, the existing mining laws do not necessarily apply to BLM sensitive species: They recommend, and do not mandate, species protection or mitigation. Thus, we find that the inadequacy of existing mechanisms to regulate mining activities on private lands is a threat to all populations of *E. soredium* and *L. ostleri* now and in the foreseeable future.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Natural and manmade threats to *Eriogonum soredium* and *Lepidium ostleri's* survival include: (1) Small population size and (2) climate change and drought.

(1) Small Population Size

General potential impacts of small population sizes to plants are discussed above in the Small Population Size section under Factor E for *Astragalus hamiltonii*.

As previously described (see the Distribution and Population Status section), the entire ranges of both species are located in an area of less than 5 mi^2 (13 km^2). Within this range, each of the four individual populations' occupied habitat areas are very small, ranging from 5 ac (2 ha) to 29 ac (12 ha) (based on Miller 2010g, Appendix B).

Eriogonum soredium and *Lepidium ostleri* can be dominant in small areas of occupied habitat, containing thousands of individuals. However, the small areas of occupation and the narrow overall range of the species make it highly susceptible to stochastic extinction events and the effects of inbreeding depression.

Despite the overall lack of information on the population ecology of *Eriogonum soredium* and *Lepidium ostleri,* we know that small populations are at an increased risk of extinction due to the potential for inbreeding depression, loss of genetic diversity, and lower sexual reproduction rates (Ellstrand and Elam 1993, entire; Wilcock and Neiland 2002, p. 275). We do not have a clear understanding of the reproductive biology of *E. soredium* and *L. ostleri,* but recruitment appears to be low or episodic for *E. soredium* (Kass 1992a, p. 7; Roth 2010a, p. 1). Low levels of recruitment in small populations may be due to inbreeding depression caused by the lack of genetic diversity and low levels of genetic exchange between populations (Ellstrand and Elam 1993, entire; Wilcock and Neiland 2002, p. 275).

Mining, or a single random event such as a wildfire (*see* Factor A), could extirpate an entire or substantial portion of a population given the small acreages of occupied habitat. Species with limited ranges and restricted habitat requirements also are more vulnerable to the effects of global climate change (*see* the Climate Change and Drought section below; IPCC 2002, p. 22; Jump and Penuelas 2005, p. 1016; Machinski *et al.* 2006, p. 226; Krause 2010, p. 79).

Overall, we consider small population size an intrinsic vulnerability to *Eriogonum soredium* and *Lepidium ostleri* that may not rise to the level of a threat on its own. However, the small population sizes rise to the level of a threat because of the combined effects of small population sizes, limited distribution, and narrow overall range, compounded by the effects of global climate change (*see* below) and the potential for stochastic extinction events such as mining and invasive species (*see* Factor A). Therefore, we consider small localized population size, in combination with mining, invasive species, and climate change, to be a threat to both species now and in the foreseeable future.

(2) Climate Change and Drought

Potential impacts of climate change and drought to the geographic area are characterized under Factor E for *Astragalus hamiltonii*. As discussed above, *Eriogonum soredium* and *Lepidium ostleri* have a limited distribution and populations are localized and small. In addition, these populations are restricted to very specific soil types. Global climate change exacerbates the risk of extinction for species that are already vulnerable due to low population numbers and restricted habitat requirements (*see* the

Climate Change and Drought section under Factor E for *Astragalus hamiltonii*).

Predicted changes in climatic conditions include increases in temperature, decreases in rainfall, and increases in atmospheric carbon dioxide in the American Southwest (Walther *et al.* 2002, p. 389; IPCC 2007, p. 48; Karl *et al.* 2009, p. 129). Although we have no information on how *Eriogonum soredium* and *Lepidium ostleri* will respond to effects related to climate change, persistent or prolonged drought conditions are likely to reduce the frequency and duration of flowering and germination events, lower the recruitment of individual plants, compromise the viability of populations, and impact pollinator availability (Tilman and El Haddi 1992, p. 263; Harrison 2001, p. 78). The smallest change in environmental factors, especially precipitation, plays a decisive role in plant survival in arid regions (Herbel *et al.* 1972, p. 1084).

Drought conditions led to a noticeable decline in survival, vigor, and reproductive output of other rare and endangered plants in the Southwest during the drought years of 2001 through 2004 (Anderton 2002, p. 1; Van Buren and Harper 2002, p. 3; Van Buren and Harper 2004, entire; Hughes 2005, entire; Clark and Clark 2007, p. 6; Roth 2008a, entire; Roth 2008b, pp. 3–4). Similar responses are anticipated to adversely affect the long-term persistence of *E. soredium* and *L. ostleri.*

Climate change is expected to increase levels of carbon dioxide (Walther *et al.* 2002, p. 389; IPCC 2007, p. 48; Karl *et al.* 2009, p. 129). Elevated levels of carbon dioxide lead to increased invasive annual plant biomass, invasive seed production, and pest outbreaks (Smith *et al.* 2000, pp. 80–81; IPCC 2002, pp. 18, 32; Ziska *et al.* 2005, p. 1328) and will put additional stressors on rare plants already suffering from the effects of elevated temperatures and drought.

The actual extent to which climate change itself will impact *Eriogonum soredium* and *Lepidium ostleri* is unclear, mostly because we do not have long-term demographic information that would allow us to predict the species' responses to changes in environmental conditions, including prolonged drought. Any predictions at this point on how climate change would affect these species would be speculative. However, as previously described, the species are threatened by mining activities (*see* Mining, Factor A) which will likely result in the loss of large numbers of individuals and maybe even entire populations. Increased surface disturbances associated with mining activities also will likely increase the extent and densities of nonnative invasive species and with it the frequencies of fires (*see* Nonnative Invasive Species section under Factor A). Given the cumulative effects of the potential population reduction and habitat loss (of already small populations) associated with mining, invasive species, and fire, we are concerned about the impacts of future climate change to *Eriogonum soredium* and *Lepidium ostleri.*

In summary, we find it difficult to analyze the potential effects of global climate change on *Eriogonum soredium* and *Lepidium ostleri* in the absence of demographic trend data for the species which would allow us to analyze how they respond to climate change over time. However, because of the threats of mining, nonnative species, and small population size, the cumulative effects of climate change may be of concern for these species in the future. At this time, we believe that the state of knowledge concerning the localized effects of climate change is too speculative to determine whether climate change is a threat to these species in the foreseeable future. However, we will continue to assess the potential of climate change to threaten the species as better scientific information becomes available.

Summary of Factor E

We assessed the potential risks of small population size, climate change, and drought to *Eriogonum soredium* and *Lepidium ostleri* populations. *E. soredium* and *L. ostleri* have a highly restricted distribution and exist in four populations scattered over an area that is less than 5 mi^2 (13 km^2). Individual populations occupy very small areas with large densities of plants. Even in the absence of information on genetic diversity, inbreeding depression, and reproductive effort, we believe a random stochastic event could impact a significant portion of a population. Small populations that are restricted by habitat requirements also are more vulnerable to the effects of climate change, such as prolonged droughts and increased fire frequencies.

While naturally occurring droughts are not likely to impact the long-term persistence of the species, an increase in periodic prolonged droughts due to climate change could impact the species across their entire range in the future. Global climate change, particularly when assessed cumulatively with small population sizes and threats from mining activities, could increase the density of invasive annual plants, which are already present in the habitat of *Eriogonum soredium* and *Lepidium ostleri* (*see* Factor A). Increased nonnative species in the habitat of *E. soredium* and *L. ostleri* can increase fire frequency and severity. Because *E. soredium* and *L. ostleri* are not likely adapted to persist through fires, wildfires can have a significant impact on these small populations.

Although small population size and climate change make the species intrinsically more vulnerable, we are uncertain whether they would rise to the level of threat by themselves. However, when combined with the threats listed under Factor A (mining and nonnative invasive species), small population size is likely to rise to the level of threat in the foreseeable future. At this time, we are uncertain of the degree to which climate change constitutes a threat to the species.

Finding

As required by the ESA, we conducted a review of the status of the species and considered the five factors in assessing whether *Eriogonum soredium* and *Lepidium ostleri* are endangered or threatened throughout all or a significant portion of their range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by *E. soredium* and *L. ostleri.* We reviewed the petition, information available in our files, and other available published and unpublished information, and we consulted with *E. soredium* and *L. ostleri* experts and other Federal and State agencies.

This status review identified threats to the species attributable to Factors A, D, and E. The primary threat to the species is habitat destruction from precious metal and gravel mining on private lands (Factor A). All populations are located in the vicinity of historical precious metal mining activities, at which ongoing exploration activities show the potential for continued mining activities in the foreseeable future. Three of the four populations are in the immediate vicinity of limestone quarries, all of which are considered active. We expect an increase in precious metal and limestone mining at these locations in the foreseeable future, with associated loss and fragmentation of *Eriogonum soredium* and *Lepidium ostleri* populations.

Bromus tectorum occurs within all four *Eriogonum soredium* and *Lepidium ostleri* populations. It is a highly invasive nonnative species that spreads quickly in response to surface disturbances such as mining. As previously discussed, both species

occur in the immediate vicinity of precious metal and limestone mines—mines inherently cause surface disturbances from excavation activities and the construction of roads and other infrastructure. Global climate change is expected to increase drought conditions in the Southwest and increase the spread of nonnative invasive species. The biggest concern associated with the increase in invasive species is the threat of increased wildfire (Factor A), particularly when considering the small population sizes and small occupied habitat area associated with these species.

The magnitude of the biological threats posed by the species' small population sizes and limited ranges are not well understood due to the lack of information available on the ecology of *Eriogonum soredium* and *Lepidium ostleri.* Future studies may provide us with a more thorough understanding of threats posed by pollinator limitation, inbreeding depression, and the potential lack of genetic diversity over the species' range. However, the small areas of occupied habitat make the species highly vulnerable to habitat destruction through mining-related activities as well as random extinction events, including invasive species (and the inherent risk of increased fires) and the potential future effects of global climate change (Factor E).

The existing regulatory mechanisms are not adequate to protect *Eriogonum soredium* and *Lepidium ostleri* from the primary threat of mining, particularly because both species occur entirely on private lands. The inadequacy of regulatory mechanisms (Factor D) on private land, combined with the economic and commercial value of the limestone and precious metals, poses a serious threat to the continued existence of *E. soredium* and *L. ostleri.* Ongoing mining in the habitat of *E. soredium* and *L. ostleri* has the potential to extirpate one of the four populations in the near future; all populations have the potential to be extirpated by mining-related activities in the foreseeable future (Factor A; Table 3).

On the basis of the best scientific and commercial information available, we find that the petitioned action to list *Eriogonum soredium* and *Lepidium ostleri* as endangered or threatened is warranted. We will make a determination on the status of the species as endangered or threatened when we do a proposed listing determination. However, as explained in more detail below, an immediate proposal of a regulation implementing this action is precluded by higher priority listing actions, and progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants.

We reviewed the available information to determine if the existing and foreseeable threats render the species at risk of extinction now such that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the ESA is warranted. We determined that issuing an emergency regulation temporarily listing the species is not warranted at this time because there is no emergency posing a significant risk to the well-being of *Eriogonum soredium* or *Lepidium ostleri.* We do not believe that any of the potential threats are of such great immediacy and severity that would threaten all of the known populations with the imminent risk of extinction. However, if at any time we determine that issuing an emergency regulation temporarily listing *Eriogonum soredium* and *Lepidium ostleri* is warranted, we will initiate this action at that time.

Listing Priority Number

The Service adopted guidelines on September 21, 1983 (48 FR 43098), to establish a system for utilizing available resources for the highest priority species when adding species to the Lists of Endangered or Threatened Wildlife and Plants or reclassifying species listed as threatened to endangered status. These guidelines, titled "Endangered and Threatened Species Listing and Recovery Priority Guidelines," address the immediacy and magnitude of threats, as well as the level of taxonomic distinctiveness, by assigning priority in descending order to monotypic genera (genus with one species), full species, and subspecies (or equivalently, DPS of vertebrates). We assigned *Eriogonum soredium* and *Lepidium ostleri* each a Listing Priority Number (LPN) of 8, based on our finding that both species face threats of moderate magnitude that are imminent. These threats include the present or threatened destruction, modification or curtailment of their habitat, the inadequacy of existing regulatory mechanisms, and other manmade factors affecting their continued existence. These threats are ongoing and, in some cases (such as nonnative species), are considered irreversible, because, in the case of nonnative species invasions, large-scale invasions cannot be recovered to a native functioning ecosystem. Our rationale for assigning *E. soredium* and *L. ostleri* an LPN of 8 is outlined below.

Under the Service's LPN Guidance, the magnitude of threat is the first criterion we look at when establishing a listing priority. The guidance indicates that species with the highest magnitude of threat are those species facing the greatest threats to their continued existence. These species receive the highest listing priority. We consider the threats that *Eriogonum soredium* and *Lepidium ostleri* face to be moderate in magnitude because the major threats (mining, nonnative species, small population size, climate change, and inadequacy of existing regulatory mechanisms), while serious and occurring rangewide, do not collectively rise to the level of high magnitude. For example, active mining is currently impacting only one of the four populations.

The magnitude of Factor A is considered moderate, because, although we think that all populations have been impacted by mining in the past and three of the four populations occur in the immediate vicinity of gravel pits, mining activities are currently ongoing in one of these gravel pits. Ongoing mining in the habitat of *E. soredium* and *L. ostleri* is expected to increase the density of *Bromus tectorum,* thereby facilitating the spread of fire. *B. tectorum* is currently documented in all populations.

We considered the magnitude of Factor D to be moderate. All populations are located on private lands with patented mining claims, where existing regulatory mechanisms are not adequate to protect *Eriogonum soredium* and *Lepidium ostleri* from the impacts of mining. All populations have the potential to be impacted by gravel and precious metal mining in the future; however, because only one population is currently impacted by gravel mining, we consider this threat to be moderate.

We consider the magnitude of Factor E to be moderate, because although small population size and climate change make the species intrinsically more vulnerable, we are uncertain of whether they would rise to the level of threat by themselves. However, when collectively analyzed with the threats listed under Factor A, they may rise to the level of threat in the foreseeable future. Although we are uncertain about the direct impacts of global climate change on *Eriogonum soredium* and *Lepidium ostleri,* we expect the species to respond negatively to changed environmental conditions and drought, primarily from an increase in nonnative invasive species and wildfire (see Factor A). The threats of nonnative invasive species and wildfire could result in the extirpation of all populations, especially because the populations are small in size.

Under our LPN Guidance, the second criterion we consider in assigning a listing priority is the immediacy of threats. This criterion is intended to ensure that the species facing actual, identifiable threats are given priority over those for which threats are only potential or that are intrinsically vulnerable but are not known to be presently facing such threats. We consider all of the threats to be imminent because we have information that the threats are identifiable and that the species are currently facing them across their entire range. These actual, identifiable threats are covered in greater detail in Factors A, D, and E of this finding. The majority of threats are ongoing and, therefore, imminent, although gravel mining is currently impacting only one of the populations. In addition to their current existence, we expect these threats to continue and likely intensify in the foreseeable future.

The third criterion in our LPN guidance is intended to devote resources to those species representing highly distinctive or isolated gene pools as reflected by taxonomy. *Eriogonum soredium* and *Lepidium ostleri* are valid taxa at the species level and, therefore, receive a higher priority than subspecies, but a lower priority than species in a monotypic genus. Therefore, we assigned *E. soredium* and *L. ostleri* an LPN of 8.

We will continue to monitor the threats to *Eriogonum soredium* and *Lepidium ostleri* and the species' status on an annual basis, and should the magnitude or the imminence of the threats change, we will revisit our assessment of the LPN.

While we conclude that listing *Eriogonum soredium* and *Lepidium ostleri* is warranted, an immediate proposal to list this species is precluded by other higher priority listings, which we address in the Preclusion and Expeditious Progress section below. Because we have assigned *Eriogonum soredium* and *Lepidium ostleri* an LPN of 8, work on a proposed listing determination for *Eriogonum soredium* and *Lepidium ostleri* is precluded by work on higher priority listing actions with absolute statutory, court-ordered, or court-approved deadlines and final listing determinations for those species that were proposed for listing with funds from Fiscal Year (FY) 2010. This work includes all the actions listed in the tables included in the section on Preclusion and Expeditious Progress, below.

Species Information—Trifolium friscanum

Taxonomy and Species Description

Trifolium friscanum is a dwarf mat-forming or tufted perennial herb in the legume family (Fabaceae). Plants have a taproot and thick woody stem. *T. friscanum* is up to 1.2 in (3 cm) tall and has silver hairy leaves composed of three leaflets (Welsh *et al.* 2008, p. 486). Its flowers resemble those of other clover species and are arranged in heads of four to nine reddish-purple flowers with pale wings (Welsh *et al.* 2008, p. 486). Flowering occurs from late May to June, followed by fruit set in June through July (Welsh *et al.* 2008, p. 486).

Trifolium friscanum was originally described by Stanley Welsh as *T. andersonii* var. *friscanum* from specimens collected on Grampian Hill in the southern San Francisco Mountains in Beaver County, Utah (Welsh 1978, p. 355). The variety was elevated to species level in 1993 (Welsh 1993, p. 407). We accept the current taxonomy and consider *T. friscanum* to be a valid species and a listable entity under the ESA.

Distribution and Population Status

Trifolium friscanum is a narrow endemic known from five small populations containing nine sites on private, SITLA, BLM, and USFS lands in Beaver and Millard Counties, Utah (Figure 4; Table 5; Kass 1992c, pp. 4–5; Evenden 1998, pp. 6–7, Appendix C; Evenden 1999, pp. 2–3; Miller 2010c, pp. 1, 4; Miller 2010e, pers. comm.; Roth 2010a, p. 4). Populations are defined as groups of sites located in the same geographic vicinity. Sites are defined as occurrence records or locations recorded by one or more researcher over time within an individual population. Despite additional searches in the San Francisco Mountains and surrounding areas (including the Wah Wah Mountains, the Confusion Range, the Mountain Home Range, and the Tunnel Springs Mountains), no other populations are known to occur (Kass 1992c, pp. 4–5; Evenden 1998, pp. 6–7, Appendix C; Evenden 1999, pp. 2–3; Miller 2010c, pp. 1, 4; Miller 2010e, pers. comm.; Roth 2010a, p. 4).

The five populations occur within three mountain ranges in southwestern Utah (*see* Figure 4 and Table 5). The two largest populations, the Grampian Hill and San Francisco Populations, occur on the southern tip on the San Francisco Mountains in Beaver County. East of the San Francisco Mountains are the Beaver Lake Mountains, where the Lime Mountain Population occurs on Lime Mountain. West and south of the San Francisco Mountains are the Wah Wah Mountains. Along the southeastern edge of the Wah Wah Mountains is the southernmost population, the Blue Mountain population, which occurs along the Beaver–Iron County boundary line on Blue Mountain. The Tunnel Springs Population occurs on Tunnel Springs Mountains in Millard County. The Tunnel Springs Mountains are west and north of the Wah Wah Mountains.

Two of the five *Trifolium friscanum* populations overlap to some degree with the previously described *Eriogonum soredium* and *Lepidium ostleri* populations. The Grampian Hill populations of all three species occur on Grampian Hill on the southern tip of the San Francisco Mountains in the same habitat. The San Francisco population of *T. friscanum* overlaps with the Indian Queen populations of *E. soredium* and *L. ostleri*. The remaining three populations of *T. friscanum*—Blue Mountain, Lime Mountain, and Tunnel Springs—are located in nearby mountain ranges as described above.

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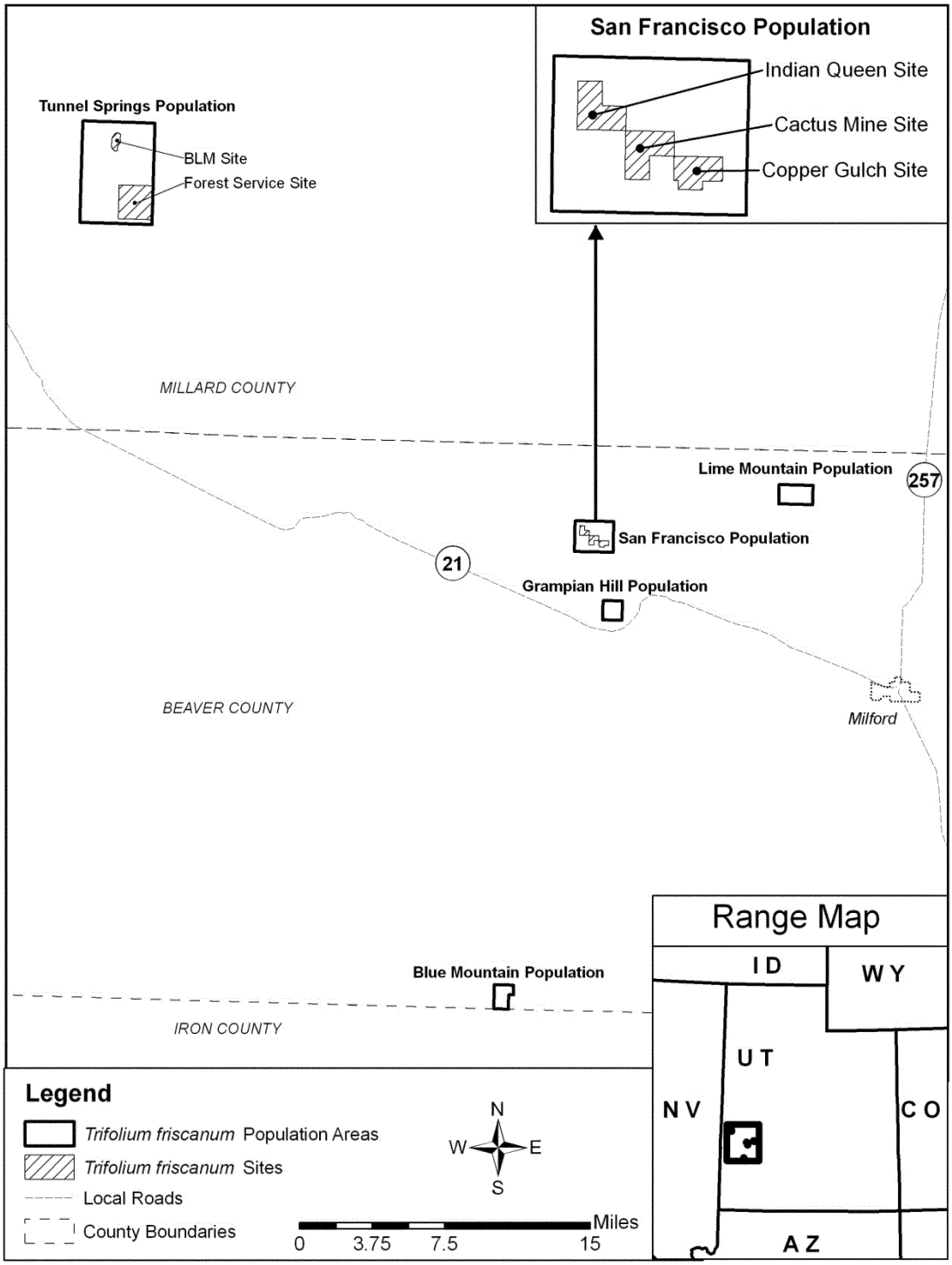

Figure 4. *Trifolium friscanum* range.

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TABLE 5—ESTIMATED NUMBER OF *Trifolium friscanum Plants*

(Evenden 1998, Appendix C; Miller 2010a, pers. comm.; Miller 2010c, pp. 1, 4; 2010d, p. 1; Roth 2010a, p. 4).

Population	Land ownership/sites	Estimated number of *Trifolium friscanum* plants
Blue Mountain	SITLA (1 site)	250.

TABLE 5—ESTIMATED NUMBER OF *Trifolium friscanum Plants*—Continued

(Evenden 1998, Appendix C; Miller 2010a, pers. comm.; Miller 2010c, pp. 1, 4; 2010d, p. 1; Roth 2010a, p. 4).

Population	Land ownership/sites	Estimated number of *Trifolium friscanum* plants
Grampian Hill	Private (1 site)	Many 1,000s.
San Francisco	BLM (Copper Gulch) (1 site)	1,000.
	Private (Cactus Mine) (1 site)	300.
	Private (Indian Queen) (1 site)	3,000.
Lime Mountain	BLM (1 site)	at least 125.
Tunnel Springs Mountains	BLM (1 site)	500.
	USFS (2 sites)*	2,000.
ESTIMATED TOTAL		13,000.

* Last surveyed in 1992. All other survey data from 2010.

Trifolium friscanum populations extend about 40 mi (64 km) from the San Francisco Mountains and stretch across 650 mi^2 (1,684 km^2) (Figure 4). Within that area, the five populations are scattered in small, disjunct areas of occupied habitat (Figure 4; Table 5).

The majority of plants (71 percent of the estimated populations) are located in the San Francisco and Grampian Hill populations (Miller 2010g, Appendix B). Total occupied habitat for these two populations (four sites) is approximately 35 ac (14 ha), each site ranging between approximately 1 ac (0.4 ha) and 12 ac (5 ha) (Darnall *et al.* 2010, entire). The Blue Mountain population occupies an area of approximately 0.33 ac (0.13 ha) (Darnall *et al.* 2010, entire). We do not have population estimates for the areas of occupied habitat for the Tunnel Springs sites (Tunnel Springs population) or the Lime Mountain population, but we assume the area of occupied habitat to be similar to or smaller than the San Francisco, Grampian Hill, and Blue Mountain populations, because these populations contain fewer than or similar numbers of plants as those estimated for the other sites (Table 5).

The total number of *Trifolium friscanum* individuals in Table 5 was derived from observational counts or estimates. For the Grampian Hill population, the estimate was "many thousands" (Miller 2010a, pers. comm.). For the purpose of this finding, "many thousands" is interpreted as approximately 5,000 individuals. Four of the 9 sites contain 500 or fewer plants (Table 5).

The population estimates were not based on actual counts of plants but on cursory observations with inherent observer biases. Similar to *Eriogonum sorenium* and *Lepidium ostleri,* the plants grow in dense mat-forming clusters, making it difficult to determine the number of individuals within a cluster. Because individual plants are difficult to distinguish, we do not believe that the variation in population estimates reflects variation in population sizes, but is rather an artifact in survey effort and methods used. Many of the sites occur on private lands where access is restricted, so population counts are estimated from observations.

Accordingly, the available population estimates are highly variable and probably not accurate. During the 1990s, population estimates ranged from 3,500 individuals (Evenden 1998, Appendix C) to approximately 6,000 individuals (Kass 1992c, p. 8). In 2010, the total number of plants was estimated at roughly 13,000 (Table 5; Miller 2010a, pers. comm.; Miller 2010c, pp. 1, 4; Miller 2010d, p. 1; Roth 2010a, p. 4). Thus, we do not have accurate population estimates or trends for this species.

Habitat

Trifolium friscanum is a narrow endemic restricted to soils derived from volcanic gravels, Ordovician limestone, and dolomite outcrops. Soils are shallow, with gravels, rocks, and boulders on the surface (Kass 1992c, p. 3; Miller 2010d, p. 1).

In the southern San Francisco Mountains, where the majority of plants are located, there are 845 ac (342 ha) of Ordovician limestone and 719 ac (291 ha) of dolomite outcrops (Darnall *et al.* 2010, entire). Ordovician limestone is rare within a 50-mi (80-km) radius of the San Francisco Mountains, but dolomite outcrops are common in the Wah Wah Mountain Range to the west (Miller 2010g, Appendix F). We have no information on the extent of volcanic gravels in the area. As previously described (see Distribution and Population Status), we are not aware of any additional populations of the species, despite additional potentially suitable habitats.

We do not know if there are other limiting factors associated with the limestone and dolomite formations that restrict the habitat use and distribution of the species; the species occupies only a fraction of the available habitat. The two largest populations—Grampian Hill and San Francisco—occupy an estimated 35 ac (14 ha) (2.3 percent) of the available limestone and dolomite outcrops (Darnall *et al.* 2010, entire). We do not have occupied habitat area totals for the remaining three populations, but we believe they are smaller, based on field evaluations and the lower number of individuals in these populations (Kass 1992c, p. 3; Miller 2010d, p. 1; Roth 2010a, pp. 1–2).

Trifolium friscanum is typically found within sparsely vegetated pinion-juniper-sagebrush communities between 5,640 and 8,440 ft (1,720–2,573 m) in elevation. Associated species include *Ephedra* spp. (Mormon tea), *Gutierrezia sarothrae* (snakeweed), *Cercocarpus intricatus* (dwarf mountain-mahogany), and *Petradoria pumila* (rock goldenrod). Associated rare species in the southern San Francisco Mountains include *Eriogonum soredium* and *Lepidium ostleri,* which generally grow on the same substrate in similar but more open habitats adjacent to *T. friscanum.*

Life History

No information is available on the life history of this species.

Summary of Information Pertaining to the Five Factors—*Trifolium friscanum*

In making our 12-month finding on the petition, we considered and evaluated the best available scientific and commercial information pertaining to *Trifolium friscanum* in relation to the five factors provided in section 4(a)(1) of the ESA (*see* the full description of these five factors in the Summary of Information Pertaining to the Five Factors—*Astragalus hamiltonii,* above).

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The following factors may affect the habitat or range of *Trifolium friscanum:*

(1) Livestock grazing, (2) recreational activities, (3) mining, and (4) nonnative invasive species.

(1) Livestock Grazing

Potential impacts of livestock grazing to plants are discussed above in the Livestock Grazing section under Factor A for *Astragalus hamiltonii.*

All *Trifolium friscanum* populations on BLM lands are located on active grazing allotments (Galbraith 2010, pers. comm.). Adjacent habitats on SITLA and private lands are subject to the same grazing practices as the allotted BLM land if the habitats are not fenced (Galbraith 2010, pers. comm.). The SITLA and private lands are only partially fenced in these areas; thus we can assume that grazing occurs. The USFS sites of the Tunnel Springs population are not grazed (Kitchen 2010, pers. comm.).

The *Trifolium friscanum* population on BLM lands in the Tunnel Springs Mountains was likely impacted by the construction of an allotment boundary fence 10 years ago (Evenden 1999, p. 7; Roth 2010a, p. 2). The fence runs along a ridge and through approximately 500 ft (150 m) of *T. friscanum* habitat (Roth 2010b, p.1). The construction of the fence may have impacted approximately 10 percent of the species' habitat in the area (Roth 2010b, p.1). Livestock and wildlife trailing occur along the fence, resulting in trampling of individual plants and soil compaction (Roth 2010a, p. 2). No plants occur within 100 ft (30 m) of either side of the fence (Roth 2010a, p. 2).

Although much of the species' habitat is accessible to livestock, we are not aware of any other disturbances or loss of plants from grazing (Kass 1992, entire; Evenden 1998, entire, Evenden 1999, entire; Pontarolo 2009, pers. comm.; Miller 2010f, pers. comm.; Roth 2010a, p. 3). Available information suggests that livestock grazing is not occurring at a level that is impacting the species (Pontarolo 2009, pers. comm.; Miller 2010f, pers. comm.; Roth 2010a, p. 3). Therefore, we have no information suggesting that grazing impacts the species now or will impact the species in the foreseeable future at a level that threatens *Trifolium friscanum.*

(2) Recreational Activities

Potential impacts of recreational activities to plants are discussed above in the Recreational Activities Section, Factor A, for *Astragalus hamiltonii.* Because we know that OHV use is widespread across the southwestern landscape, we analyzed its occurrence in *Triolium friscanum's* habitat for this finding.

Access to the majority of occupied habitat on private lands is closed to all vehicles, including OHVs (Miller 2010g, p. 5). There are no known impacts of OHV use in *Trifolium friscanum's* occupied habitat on private lands (Miller 2010f, pers. comm.; Roth 2010a, pp. 1–2). The OHV use also does not appear to impact *T. friscanum's* habitat on SITLA, BLM, or USFS lands (Pontarolo 2009, pers. comm.; 2010, pers. comm.; Miller 2010f, pers. comm.; Roth 2010a, pp. 1–2). Therefore, we do not believe that recreational activities threaten *T. friscanum* now, nor do we anticipate that these activities will become a threat in the foreseeable future.

(3) Mining

As previously described (*see* Distribution and Population Status), *Trifolium friscanum* occurs in five population areas: Blue Mountain, Grampian Hill, San Francisco, Lime Mountain, and Tunnel Springs Mountains. For purposes of the following analysis, it is important to note that the Grampian Hill and San Francisco populations occur in the southern San Francisco Mountains in the same vicinity and habitat as *Eriogonum soredium* and *Lepidium ostleri*. The other three populations are located in nearby mountain ranges.

The San Francisco Mountains have an extensive history of mining of precious metals and limestone gravel (Table 6; Evenden 1998, p. 3). We described this mining history, the likelihood of future mining activities, and effects to the species under *Eriogonum soredium* and *Lepidium ostleri,* Factor A, Mining. This analysis applies to the Grampian Hill and San Francisco populations of *Trifolium friscanum,* because the three species co-occur (*see* Distribution and Population Status). In addition, we evaluated mining activity and its impacts to the remaining three populations of *T. friscanum*.

To review, precious metal mining in the southern San Francisco Mountains is likely to impact the Grampian Hill and San Francisco populations of *Trifolium friscanum* (Table 6). The Grampian Hill population is located in the area of the King David Mine, which is part of the historical Horn Silver Mine. The San Francisco population (which overlaps the Indian Queen population of *Eriogonum soredium* and *Lepidium ostleri*) is in the vicinity of mine shafts near the Cactus Mine, an historical copper mine (*see E. soredium* and *L. ostleri,* Factor A, Mining). Although large-scale precious metal mining in the area ceased decades ago, we believe mining is likely to occur again in the foreseeable future due to patent rights and ongoing exploration for silver, zinc, and copper deposits—including recent exploration activities at the Horn Silver Mine (*see E. soredium* and *L. ostleri,* Factor A, Mining). Precious metal mining in the vicinity of the Grampian Hill and San Francisco populations is of concern because these populations comprise the species' largest known populations, containing the vast majority of known individuals (9,300 individuals, or 71 percent of the species' estimated total population) (Table 5).

The Lime Mountain population has experienced precious metal mining activity in the past (Table 6; Miller 2010h, pp. 6–7). The last mining activity occurred in the early 1980s. We do not anticipate additional mining, due to the small amounts of minerals that were extracted (Miller 2010h, p. 7). We are not aware of precious metal mining activities in the vicinity of the Blue Mountain or Tunnel Springs populations.

TABLE 6—MINING ACTIVITIES IN THE HABITAT OF *Trifolium friscanum*

Population	Mining Activity		
	Historical	Current	Future
Blue Mountain	gravel quarrying	active	gravel quarrying.
Grampian Hill	silver, lead, copper, zinc (Horn Silver Mine).	none	silver, lead, copper, zinc, landscape gravel quarrying.
San Francisco	silver, lead, copper, zinc, gravel quarrying (Cactus Mine).	active	silver, lead, copper, zinc, landscape gravel quarrying.

TABLE 6—MINING ACTIVITIES IN THE HABITAT OF *Trifolium friscanum*—Continued

Population	Mining Activity		
	Historical	Current	Future
Lime Mountain	silver, lead, copper, zinc, native gold, iron (Skylark, Independence & Galena Mines).	none	unknown.
Tunnel Springs Mountains	unknown	none	unknown.

Gravel mining is known to occur within the range of *Trifolium friscanum,* particularly in the San Francisco Mountains and Wah Wah Mountains. Impacts to *T. friscanum* from gravel mining in the southern San Francisco Mountains is similar to those analyzed for *Eriogonum soredium* and *Lepidium ostleri,* because of their co-occurrence (*see E. soredium* and *L. ostleri,* Factor A, Mining, above).

Gravel mining in the southern San Francisco Mountains is likely to impact the San Francisco population of *T. friscanum* and possibly the Grampian Hill population (Table 6). We estimate that 19 ac (8 ha) of suitable habitat is disturbed by gravel mining activities near the San Francisco population of *Trifolium friscanum*. Two quarries are located within 1,000 ft (300 m) of two sites (Cactus Mine and Copper Gulch) of the San Francisco population of *T. friscanum.* Based on habitat similarities and proximity, we believe the plant may have occupied these areas prior to the mining activity. Gravel pits in this area are considered active because they are not reclaimed—given their close proximity to known *T. friscanum* plants, these gravel pits could impact the remaining occupied habitat of the species through additional quarrying activities (i.e., removal of the entire substrate) or when roads and other infrastructure are constructed. The San Francisco population currently occupies only 15 ac (6 ha) of habitat, distributed in three sites (Copper Gulch, Cactus Mine, and Indian Queen) (Table 5; Darnall *et al.* 2010, entire).

Gravel mining also may impact the Grampian Hill population of *Trifolium friscanum* in the future. Although gravel mining is not actively occurring at Grampian Hill, gravel pits exist within 1 mi (1.6 km) of this *T. friscanum* population—near the Cupric Mine (*see E. soredium* and *L. ostleri,* Factor A, Mining, above). We do not know if gravel mining will definitely occur at the Grampian Hill population. However, mining operations are expected to either expand from the vicinity of the Cupric Mine or be moved to a new location within the species' habitat in the near future (Munson 2010, pers. comm.). Due to the limited extent of the Ordovician limestone deposits across the landscape (*see* Habitat), it is plausible that mining activities could occur at the Grampian Hill population. Even if gravel mining does not occur at the Grampian Hill population, we previously established that this population is likely to be impacted by precious metal mining.

A similar overlap in habitat types and gravel quarrying (Table 6) occurs for this species in the Blue Mountain population. The Blue Mountain population, which is less than 1 ac (0.4 ha) in size, is located on SITLA lands within a couple hundred feet (meters) of a gravel pit (Evenden 1998, p. 9; Roth 2010a, p. 4). This mine is not reclaimed and, therefore, is considered active (Darnall *et al.* 2010, entire). Therefore, we assume that continued gravel mining will ultimately impact this population if it has not already occurred. The need for gravel sources is expected to increase, because an increasing human population growth (U.S. Census Bureau 2010b, entire; Utah GOPB 2010, p. 48) will result in the need for increased road construction and maintenance in the future. Although the gravel in the Blue Mountain is mined for road construction projects, the effects analysis under *E. soredium* and *L. ostleri* (*see* Factor A, Mining) is relevant; i.e., mining for gravel will lead to the degradation and loss of suitable habitat for *Trifolium friscanum*.

As previously discussed (*see Eriogonum soredium* and *Lepidium ostleri,* Factor A, Mining, above), construction sand, gravel, and crushed stone together rank as the second most valuable commodity produced among industrial minerals in Utah (Bon and Krahulec 2009, p. 5). Gravel, stone, and rock are generally mined for local and regional distribution due to the high cost of transport. The quarries in the San Francisco Mountains are the closest crushed limestone quarries to Washington County, one of the fastest growing counties in Utah (*see E. soredium* and *L. ostleri,* Factor A). In general, there has been a net loss of local sand and gravel supply pits in the Washington County area due to ongoing urban development and the lack of available gravel pit operations on surrounding Federal lands (Blackett and Tripp 1999, p. 33). Thus, the Blue Mountain population area could become a primary source of gravel for Washington County and other nearby communities, especially because the pit's location on SITLA lands limits the need for environmental regulations. Overall, it is likely that an increasing human population growth in Washington County (U.S. Census Bureau 2010b, entire; Utah GOPB 2010, p. 48) will result in an increased demand for the limestone and gravel resources at and nearby known populations of *T. friscanum*.

To summarize, mining throughout large portions of *Trifolium friscanum's* range has impacted available habitat. Three of the five known populations are located at historical precious metal mines or gravel mines on private and SITLA lands (Table 5; Table 6; *see* Factor D). Two of these populations (San Francisco and Grampian Hill) comprise the vast majority (71 percent) of the known estimated population of *T. friscanum* (Table 5). Precious metal mining is likely to impact populations of *T. friscanum* in the foreseeable future, particularly in the vicinity of the large Grampian Hill and San Francisco populations. Gravel mining is expected to increase in the future in response to increased population growth and limited availability of active gravel pits in nearby Washington County (*see E. soredium* and *L. ostleri,* Factor A). Available information suggests that three of five populations will be significantly impacted by either precious metal or gravel mining in the foreseeable future (*see E. soredium* and *L. ostleri,* Factor A, Mining). Therefore, we have determined that mining is a threat to *T. friscanum* now and in the foreseeable future.

(4) Nonnative Invasive Species

Potential impacts of nonnative invasive species to native plants and their habitat are discussed above in *Astragalus hamiltonii,* Factor A, Nonnative Invasive Species. The annual nonnative invasive grass, *Bromus tectorum,* is considered the most

ubiquitous invasive species in the Intermountain West due to its ability to rapidly invade native dryland ecosystems and outcompete native plant species (Mack 1981, p. 145; Mack and Pyke 1983, p. 88; Thill *et al.* 1984, p. 10).

Bromus tectorum occurs in the habitat and vicinity of the Grampian Hill and San Francisco *Trifolium friscanum* populations, which also is where the majority of plants occur (Table 5; Miller 2010c, pp. 2–5; Roth 2010a, p. 1). We do not know whether *B. tectorum* occurs in the other three populations, but given the ubiquitous distribution of *B. tectorum* in the Intermountain West, we expect it occurs in the vicinity of all populations (Novack and Mack, 2001, p. 115).

Surface disturbances increase the occurrence and densities of *B. tectorum* (*see Eriogonum soredium* and *Lepidium ostleri,* Factor A, Nonnative Invasive Species; Mack 1981, p. 145). As previously described, increased mining activities and associated surface disturbances are expected to occur in and adjacent to the occupied habitat for *T. friscanum* in the San Francisco and Blue Mountains (*see* Mining, above), consequently encouraging *B. tectorum* to expand into the species' habitat.

Invasions of annual nonnative species, such as *Bromus tectorum,* are well documented to contribute to increased fire frequencies (Brooks and Pyke 2002, p. 5; Grace *et al.* 2002, p. 43; Brooks *et al.* 2003, pp. 4, 13, 15). The risk of fire is expected to increase from 46 to 100 percent when the cover of *B. tectorum* increases from 12 to 45 percent or more (Link *et al.* 2006, p. 116). In the absence of exotic species, it is generally estimated that fire return intervals in xeric sagebrush communities range from 100 to 350 years (Baker 2006, p. 181). In some areas of the Great Basin (Snake River Plain), fire return intervals due to *B. tectorum* invasion are now between 3 and 5 years (Whisenant 1990, p. 4). Most plant species occurring within a sagebrush ecosystem are not expected to be adapted to frequent fires, as evidenced in the lack of evolutionary adaptations found in other shrub-dominated fire-adapted ecosystems like chaparral. Examples of such adaptation would include re-sprouting and heat-stimulated seed germination (Baker, in press, p. 17).

In the absence of annual nonnative species, *T. friscanum* grows in sparsely vegetated communities that are unlikely to carry fires (*see* Habitat section). Thus, *T. friscanum* is unlikely to be adapted to fire and, therefore, unlikely to persist through a fire. Therefore, the potential expansion of invasive species and associated fire is a threat to the species, especially when considering the limited distribution of the species and the high potential of stochastic extinctions (as discussed in the Small Population Size, Factor E, below). As described in the Distribution section, the majority of plants are located within the Grampian Hill and San Francisco populations, where occurrences of *B. tectorum* are documented. Occupied habitat in these populations ranges from 1 to 12 ac (0.4 to 5 ha).

In summary, *Bromus tectorum* occurs in the two largest *Trifolium friscanum* populations (Grampian Hill and San Francisco populations, Table 5). Given the ability of *B. tectorum* to rapidly invade dryland ecosystems (Mack 1981, p. 145; Mack and Pyke, 1983, p. 88; Thill *et al.* 1984, p. 10), we expect it to increase in the future in response to surface disturbance from increased mining activities and global climate change (*see* the Climate Change and Drought section under Factor E for *Astragalus hamiltonii*). An increase in nonnative species is expected to increase the frequency of fires in *T. friscanum's* habitat. Therefore, we determine that nonnative invasive species are a threat to two of five populations of *T. frsicanum* and the majority of individuals now, and may impact all populations in the foreseeable future when evaluated cumulatively with mining activities (and associated surface disturbances), climate change, and fire.

Summary of Factor A

At this time, based on best available information, we do not believe that grazing or recreational activities significantly threaten *Trifolium friscanum* now or in the foreseeable future. However, we determine that mining and nonnative invasive species are threats to *T. friscanum.*

Mining activities impacted *Trifolium friscanum* habitat in the past and continue to be a threat to the species and its habitat throughout large portions of its range. Two of the five populations and the majority of individuals are located on lands with an extensive history of precious metal mining; ongoing exploration activities indicate that precious metal mining is likely to threaten the species in the foreseeable future. The main threat to the majority of *T. friscanum* plants is gravel mining (Table 6). Three of the five populations are located in the vicinity of gravel pits that are mined for road and landscaping gravel. The three populations located in the vicinity of gravel mines contain the majority of plants and may be mined for gravel in the future (Table 6). We anticipate an increase in the demand for precious metals and landscape rock based on the economic outlook for these commodities, regional availability, and the proximity of these gravel mines to a rapidly expanding urban area and, therefore, an increase in impacts to *T. friscanum.*

Bromus tectorum is documented to occur in the two largest of the five populations of *Trifolium friscanum.* The threat of fire caused by annual nonnative species invasions is exacerbated by mining activities and global climate change (*see* the Climate Change and Drought section under Factor E). Small population sizes and extremely limited distribution of this species make it especially vulnerable to stochastic extinction events, including mining activities and wildfires caused by increased invasions of nonnative species (*see* the Small Population Size section under Factor E).

Therefore, we find that *Trifolium friscanum* is threatened by the present or threatened destruction, modification, or curtailment of the species' habitat or range, now and in the foreseeable future, based on impacts from mining activities and nonnative invasive species.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Trifolium friscanum is not a plant of horticultural interest. We are not aware of any overutilization or collection of *T. friscanum.* Therefore, overutilization for commercial, recreational, scientific, or educational purposes does not appear to pose a significant threat to the species now nor is it likely to become a threat in the foreseeable future.

Factor C. Disease or Predation

Disease and herbivory on the species are unknown. We do not have any information indicating that disease is impacting *Trifolium friscanum.* We also do not have any information indicating that herbivory is occurring from livestock (see the Livestock Grazing section under Factor A), wildlife, or insects (Kass 1992c, p. 10; Evenden 1998, entire; Evenden 1999, entire; Miller 2010a, p. 1; Miller 2010c, entire; Roth 2010a, entire). Thus, we do not consider disease or predation to be threats to this species.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

There are no endangered species laws protecting plants on private, State, or Tribal lands in Utah. The majority of individual plants are located on SITLA

or private lands (Table 5). *Trifolium friscanum* is listed as a bureau-sensitive plant for the BLM. Limited policy-level protection by the BLM is afforded through the Special Status Species Management Policy Manual # 6840, which forms the basis for special status species management on BLM lands (BLM 2008e, entire). The two sites on USFS lands are located within the Desert Experimental Range in the Tunnel Springs Mountains (Tunnel Springs population) and appear to be secure, although the population has not been visited since 1992 (Kass 1992c, p. 11; Evenden 1998, Appendix C; Evenden 1999, p. 3).

This species is predominantly located on private or SITLA lands (Table 5), where it is threatened by mining-related activities (*see* Factor A). There are limited regulatory mechanisms in place that may protect *Trifolium friscanum* from mining on private or State lands. As described under *Eriogonum soredium* and *Lepidium ostleri,* Factor D, State environmental impact assessments are required for large mining operations for all mineral exploration, development, and extraction, including gravel pits and precious metal mining (UDOGM 2010b, p.1; Baker 2010, pers. comm.). *T. friscanum* is not State listed, but it is on the BLM sensitive species list. If UDOGM is made aware of impacts to these species, they could consider minimizing and mitigating impacts; however, there is no requirement to address species that are not federally listed in the mine permitting process (Baker 2010, pers. comm.).

The existing mining activities (*see* Factor A, Mining) are under the 5-ac (2-ha) regulatory threshold and, therefore, not subject to permitting laws (Munson 2010, pers. comm.). A few of the gravel mine pits almost exceed the 5-ac (2-ha) limit, and the operators may need to apply for permits (Munson 2010, pers. comm.); however, they also could choose to begin new gravel pits, or reclaim portions of the existing pits to remain below the 5-ac (2-ha) limit (Munson 2010, pers. comm.).

In summary, the existing regulatory mechanisms are not adequate to protect *T. friscanum* from becoming threatened or endangered by precious metal or gravel mining on SITLA and private lands. The active gravel pits are below the 5-ac (2-ha) threshold that would automatically trigger regulatory environmental impact assessments. Even if an environmental impact assessment is completed for any of the mines, the existing mining laws only recommend, and do not mandate, the species' protection or mitigation. Thus, we find that the inadequacy of existing mechanisms to regulate mining activities on private and State lands is a threat to three of five populations and the majority of individuals, and thus to *T. friscanum* now and into the foreseeable future.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Natural and manmade threats to *Trifolium friscanum's* survival include: (1) Small population size and (2) climate change and drought.

(1) Small Population Size

General potential impacts of small population sizes in plants are discussed above in the Small Population Size section under Factor E for *Astragalus hamiltonii.*

As previously discussed (*see* Distribution and Population Status, above), the entire species' range is restricted to highly specialized habitat niches, distributed in 5 populations (and 9 sites) with a total population estimate of 13,000 plants. Four of the 9 sites contain 500 or fewer individuals (Table 5). Only a fraction of the entire species' range is occupied habitat. The majority of plants are located in two populations containing four sites of occupied habitat, ranging from an estimated 1 ac (0.4 ha) to a maximum of 12 ac (5 ha) (Darnall *et al.* 2010, entire; Miller 2010g, Appendix B).

Despite the overall lack of information on the population ecology of *Trifolium friscanum,* we know that small populations are at an increased risk of extinction due to the potential for inbreeding depression, loss of genetic diversity, and lower sexual reproduction rates (Ellstrand and Elam 1993, entire; Wilcock and Neiland 2002, p. 275). No information is available on the population genetics, pollination, or reproductive effort and success of *T. friscanum.* However, the small areas of occupation and the narrow overall range of the species make it highly susceptible to stochastic extinction events and the effects of inbreeding depression.

Mining or a single random event, such as a wildfire from invasive species (*see* Factor A, Nonnative Invasive Species), could extirpate an entire or at least a substantial portion of a population, given the small areas of occupied habitat. Species with limited ranges and restricted habitat requirements also are more vulnerable to the effects of global climate change (*see* Climate Change and Drought, below) (IPCC 2002, p. 22; Jump and Penuelas 2005, p. 1016; Machinski *et al.* 2006, p. 226; Krause 2010, p. 79). Overall, we consider small population size an intrinsic vulnerability to *Trifolium friscanum,* which may not rise to the level of a threat on its own. However, the small population sizes rise to the level of a threat because of the combined effects of having only five highly localized small populations with the effects of global climate change (*see* below) and the potential for stochastic extinction events such as mining, and fire induced by invasive species (*see* Factor A). Therefore, we consider small localized population size, in combination with mining, invasive species, and climate change, to be a threat to the species now and in the foreseeable future.

(2) Climate Change and Drought

Potential impacts of climate change and drought to the geographic area are characterized in the Climate Change and Drought section under Factor E for *Astragalus hamiltonii.* As discussed in the Small Population Size section above, *Trifolium friscanum* has a limited distribution and populations are localized and small. In addition, these populations are restricted to very specific soil types. Global climate change exacerbates the risk of extinction for species that are already vulnerable due to low population numbers and restricted habitat requirements (*see* Climate Change and Drought, Factor E for *Astragalus hamiltonii,* above).

Predicted changes in climatic conditions include increases in temperature, decreases in rainfall, and increases in atmospheric carbon dioxide in the American Southwest (Walther *et al.* 2002, p. 389; IPCC 2007, p. 48; Karl *et al.* 2009, p. 129). Although we have no information on how *Trifolium friscanum* will respond to effects related to climate change, persistent or prolonged drought conditions are likely to reduce the frequency and duration of flowering and germination events, lower the recruitment of individual plants, compromise the viability of populations, and impact pollinator availability (Tilman and El Haddi 1992, p. 263; Harrison 2001, p. 78). The smallest change in environmental factors, especially precipitation, plays a decisive role in plant survival in arid regions (Herbel *et al.* 1972, p. 1084).

Drought conditions led to a noticeable decline in survival, vigor, and reproductive output of other rare and endangered plants in the Southwest during the drought years of 2001 through 2004 (Anderton 2002, p. 1; Van Buren and Harper 2002, p. 3; Van Buren and Harper 2004, entire; Hughes 2005, entire; Clark and Clark 2007, p. 6; Roth 2008a, entire; Roth 2008b, pp. 3–4). Similar responses are anticipated to

adversely affect the long-term persistence of *T. friscanum.*

Climate change is expected to increase levels of carbon dioxide (Walther *et al.* 2002, p. 389; IPCC 2007, p. 48; Karl *et al.* 2009, p. 129). Elevated levels of carbon dioxide lead to increased invasive annual plant biomass, invasive seed production, and pest outbreaks (Smith *et al.* 2000, p. 80–81; IPCC 2002, pp. 18, 32; Ziska *et al.* 2005, p. 1328), and will put additional stressors on rare plants already suffering from the effects of elevated temperatures and drought.

The actual extent to which climate change itself will impact *Trifolium friscanum* is unclear, mostly because we do not have long-term demographic information that allows us to predict the species' response to changes in environmental conditions, including prolonged drought. However, as previously described, the species is threatened by mining activities (*see* Mining, Factor A, above), which will likely result in the loss of large numbers of individuals or even entire populations. Increased surface disturbances associated with mining activities also will likely increase the extent and densities of nonnative invasive species and, with these, the frequencies of fires (*see* Nonnative Invasive Species, Factor A, above). The cumulative effects of the potential reduction in population numbers and habitat loss (of already small populations) associated with mining and increased invasive species (and fire) are likely to increase the risk of the species being impacted by changes in climate.

In summary, we find it difficult to analyze the potential effects of global climate change on *Trifolium friscanum* in the absence of demographic trend data for the species which would allow us to analyze how the species responds to climate change through time. However, the cumulative effects posed by the threats of mining, nonnative species and small population size may exacerbate the effects of climate change on *T. friscanum* in the future. However, at this time, we believe that the state of knowledge concerning the localized effects of climate change within the habitat occupied by *T. friscanum* is too speculative to determine whether climate change is a threat to this species in the foreseeable future. We will continue to assess the potential of climate change to threaten the species as better scientific information becomes available.

Summary of Factor E

We assessed the potential risks of small population size, climate change, and drought to *Trifolium friscanum* populations. *T. friscanum* has a highly restricted distribution and is known from five small, localized populations. Even in the absence of information on genetic diversity, inbreeding depression, and reproductive effort, a random stochastic event could impact a significant portion of a population. Small populations that are restricted by habitat requirements are also more vulnerable to the effects of climate change, such as prolonged droughts and increased fire frequencies.

While naturally occurring droughts are not likely to impact the long-term persistence of the species, an increase in periodic prolonged droughts due to climate change is likely to impact the species across its entire range in the future. Global climate change, particularly when assessed cumulatively with small population size and threats from mining activities, is expected to increase the density of invasive annual grasses, which are already present in the habitat of *Trifolium friscanum* within the populations that contain the majority of the plants (*see* Factor A). Increased nonnative species in the habitat of *T. friscanum* can increase fire frequency and severity. Because *T. friscanum* is not likely adapted to persist through fires, wildfires can have a significant impact on these small populations.

Although small population size and climate change make the species intrinsically more vulnerable, we are uncertain whether they would rise to the level of threat by themselves. However, when combined with the threats listed under Factor A, we believe that small population size is likely to rise to the level of threat in the foreseeable future. At this time, we are uncertain of the degree to which climate change constitutes a threat to the species.

Finding

As required by the ESA, we conducted a review of the status of the species and considered the five factors in assessing whether *Trifolium friscanum* is endangered or threatened throughout all or a significant portion of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by *T. friscanum.* We reviewed the petition, information available in our files, as well as other available published and unpublished information, and we consulted with species experts and other Federal and State agencies.

This status review identified threats to the species attributable to Factors A, D, and E. The primary threat to the species is habitat destruction from precious metal and gravel mining on private and SITLA lands (Factor A). The largest populations containing the majority of *Trifolium friscanum* plants are located on private lands with active mining claims. These populations were likely impacted by historical precious metal mining. Another population is located on SITLA lands in the immediate vicinity of a gravel pit. We expect an increase in precious metal and gravel mining in the foreseeable future, with the associated loss and fragmentation of *T. friscanum* populations.

Bromus tectorum occurs in the vicinity of the two largest populations of the five known *Trifolium friscanum* populations. It is a highly invasive species and is expected to increase in areas where surface disturbance such as mining occurs. As previously discussed, the species occurs in the vicinity of gravel and precious metal mines. Mines inherently cause surface disturbances from excavation activities and the construction of roads and other infrastructure. Global climate change is expected to increase drought conditions in the Southwest and increase the spread of nonnative invasive species. The biggest concern associated with the increase in invasive species is the threat of increased wildfire (Factor A), particularly when considering the small population sizes and small occupied habitat acreages associated with the species.

The magnitude of the biological threats posed by the small population size and limited species range are not well understood due to the lack of information available on the ecology of *Trifolium friscanum.* Future studies may provide us with a more thorough understanding of threats posed by pollinator limitation, inbreeding depression, and the potential lack of genetic diversity over the species' range. Even without detailed knowledge on how small population sizes are impacting the biology and ecology of *T. friscanum,* the small areas of occupied habitat make the species highly vulnerable to habitat destruction through mining-related activities as well as random extinction events, including fires and the effects of global climate change (Factor E).

The existing regulatory mechanisms are not adequate to protect *Trifolium friscanum* from the primary threat of mining, particularly because the

majority of individuals are located on private lands (Factor D). The inadequacy of regulatory mechanisms (Factor D) on private and State lands, combined with the high economic and commercial value of much of the substrate this species depends on, poses a serious threat to *T. friscanum.* A large portion of the species' individuals have the potential to be extirpated by mining activities in the foreseeable future (Factor A; Table 6). Ongoing mining in the habitat of *T. friscanum* has the potential to extirpate three of the five populations in the foreseeable future, two of which contain the majority of plants (Factor A, Table 5).

On the basis of the best scientific and commercial information available, we find that the petitioned action to list *Trifolium friscanum* as endangered or threatened is warranted. We will make a determination on the status of the species as endangered or threatened when we do a proposed listing determination. However, as explained in more detail below, an immediate proposal of a regulation implementing this action is precluded by higher priority listing actions, and progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants.

We reviewed the available information to determine if the existing and foreseeable threats render the species at risk of extinction now such that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the ESA is warranted. We determined that issuing an emergency regulation temporarily listing the species is not warranted at this time because there is no emergency posing a significant risk to the well being of *Trifolium friscanum.* We do not believe that any of the potential threats are of such great immediacy and severity that would threaten all of the known populations with the imminent risk of extinction. However, if at any time we determine that issuing an emergency regulation temporarily listing *Trifolium friscanum* is warranted, we will initiate this action at that time.

Listing Priority Number

Pursuant to our guidelines, titled "Endangered and Threatened Species Listing and Recovery Priority Guidelines" (described above), we have assigned *Trifolium friscanum* a Listing Priority Number (LPN) of 8, based on our finding that the species faces threats that are of moderate magnitude and are imminent. These threats include the present or threatened destruction, modification, or curtailment of its habitat, the inadequacy of existing regulatory mechanisms, and other natural or manmade factors affecting its continued existence. These threats are ongoing and, in some cases (such as nonnative species), are considered irreversible because large-scale invasions cannot be recovered to a native functioning ecosystem. Our rationale for assigning *T. friscanum* an LPN of 8 is outlined below.

Under the Service's LPN guidance, the magnitude of threat is the first criterion we look at when establishing a listing priority. The guidance indicates that species with the highest magnitude of threat are those species facing the greatest threats to their continued existence. These species receive the highest listing priority. We consider the magnitude of Factor A moderate. While current mining activities are ongoing in the habitat of *T. friscanum,* they are not ongoing in the immediate vicinity of any of the populations. Mining in the habitat of these populations is expected to increase the density of B. tectorum, thereby facilitating the spread of fire. *B. tectorum* occurs in two of the five populations, which also contain the largest number of individuals. We have no documentation on the density of *B. tectorum* within these populations but we are expecting it to increase in the future.

We consider the magnitude of Factor D to be moderate. Three of the five populations are located on private or SITLA lands. The majority of individuals are located on private lands with active patented mining claims. Existing regulatory mechanisms do not adequately protect *Trifolium friscanum* from the impacts of mining on private lands. The majority of individuals (3 populations) have the potential to be impacted by mining in the future. However, because none of the populations are directly impacted by current mining levels on SITLA or private lands, we consider threats under Factor D to be moderate at this time.

We consider the magnitude of Factor E moderate, because, although small population size and climate change make the species intrinsically more vulnerable, we are uncertain of whether they would rise to the level of threat by themselves. However, when collectively analyzed with the threats listed under Factor A, they may rise to the level of threat in the foreseeable future. Although we are uncertain about the direct impacts of global climate change on *Trifolium friscanum,* we expect the species to respond negatively to changed environmental conditions and drought, especially when combined with the effects of small population size and the threat of increased mining activities.

Therefore, we consider the threats that *Trifolium friscanum* faces to be moderate in magnitude because the major threats (mining, nonnative invasive species, small population size, plus inadequacy of existing regulatory mechanisms), while serious and occurring rangewide, do not collectively rise to the level of high magnitude.

Under our LPN guidance, the second criterion we consider in assigning a listing priority is the immediacy of threats. This criterion is intended to ensure that the species facing actual, identifiable threats are given priority over those for which threats are only potential or those that are intrinsically vulnerable but are not known to be presently facing such threats. We consider all of the threats to be imminent because we have factual information that the threats are identifiable and that the species is currently facing them in many portions of its range. These actual, identifiable threats are covered in greater detail in Factors A, D, and E of this finding. The majority of threats are ongoing and, therefore, imminent, although mining is currently ongoing in the habitat of only one of the populations. In addition to their current existence, we expect these threats, except for inadequate regulations, to continue and likely intensify in the foreseeable future.

The third criterion in our LPN guidance is intended to devote resources to those species representing highly distinctive or isolated gene pools as reflected by taxonomy. *Trifolium friscanum* is a valid taxon at the species level and, therefore, receives a higher priority than subspecies, but a lower priority than species in a monotypic genus. Therefore, we assigned *T. friscanum* an LPN of 8.

We will continue to monitor the threats to *Trifolium friscanum* and the species' status on an annual basis, and, should the magnitude or the imminence of the threats change, we will revisit our assessment of the LPN.

While we conclude that listing *Trifolium friscanum* is warranted, an immediate proposal to list this species is precluded by other higher priority listings, which we address in the Preclusion and Expeditious Progress section below. Because we have assigned *T. friscanum* an LPN of 8, work on a proposed listing determination for *T. friscanum* is precluded by work on higher priority listing actions with absolute statutory, court-ordered, or court-approved deadlines and final listing determinations for those species that were proposed for listing with

funds from FY 2010. This work includes all the actions listed in the tables below under expeditious progress.

Preclusion and Expeditious Progress

Preclusion is a function of the listing priority of a species in relation to the resources that are available and competing demands for those resources. Thus, in any given fiscal year, multiple factors dictate whether it will be possible to undertake work on a proposed listing regulation or whether promulgation of such a proposal is warranted but precluded by higher priority listing actions.

The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Services' Listing Program is available to support work involving the following listing actions: Proposed and final listing rules; 90-day and 12-month findings on petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) or to change the status of a species from threatened to endangered; annual determinations on prior "warranted but precluded" petition findings as required under section 4(b)(3)(C)(i) of the ESA; critical habitat petition findings; proposed and final rules designating critical habitat; and litigation-related, administrative, and program-management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat).

The work involved in preparing various listing documents can be extensive and may include, but is not limited to: Gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. For example, during the past several years the cost (excluding publication costs) for preparing a 12-month finding, without a proposed rule, has ranged from approximately $11,000 for one species with a restricted range and involving a relatively uncomplicated analysis to $305,000 for another species that is wide ranging and involving a complex analysis.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (*see* 31 U.S.C. 1341(a)(1)(A)). In addition, in FY 1998 and for each FY since then, Congress has placed a statutory cap on funds which may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that FY. This cap was designed to prevent funds appropriated for other functions under the ESA (for example, recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (*see* House Report 105–163, 105th Congress, 1st Session, July 1, 1997).

Recognizing that designation of critical habitat for species already listed would consume most of the overall Listing Program appropriation, Congress also put a critical habitat subcap in place in FY 2002 and has retained it each subsequent year to ensure that some funds are available for other work in the Listing Program: "The critical habitat designation subcap will ensure that some funding is available to address other listing activities" (House Report No. 107–103, 107th Congress, 1st Session, June 19, 2001). In FY 2002 and each year until FY 2006, the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the critical habitat subcap funds have been available for other listing activities. In FY 2007, we were able to use some of the critical habitat subcap funds to fund proposed listing determinations for high-priority candidate species. In FY 2009, while we were unable to use any of the critical habitat subcap funds to fund proposed listing determinations, we did use some of this money to fund the critical habitat portion of some proposed listing determinations so that the proposed listing determination and proposed critical habitat designation could be combined into one rule, thereby being more efficient in our work. In FY 2010, we are using some of the critical habitat subcap funds to fund actions with statutory deadlines.

Thus, through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have in effect determined the amount of money available for other listing activities. Therefore, the funds in the listing cap, other than those needed to address court-mandated critical habitat for already listed species, set the limits on our petition finding determinations.

Congress also recognized that the availability of resources was the key element in deciding, when making a 12-month petition finding, whether we would prepare and issue a listing proposal or instead make a "warranted but precluded" finding for a given species. The Conference Report accompanying Public Law 97–304, which established the current statutory deadlines and the warranted-but-precluded finding, states (in a discussion on 90-day petition findings that by its own terms also covers 12-month findings) that the deadlines were "not intended to allow the Secretary to delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition [that is, for a lower-ranking species] unwise."

In FY 2010, expeditious progress is that amount of work that can be achieved with $10,471,000, which is the amount of money that Congress appropriated for the Listing Program (that is, the portion of the Listing Program funding not related to critical habitat designations for species that are already listed). However, these funds are not enough to fully fund all our court-ordered and statutory listing actions in FY 2010, so we are using $1,114,417 of our critical habitat subcap funds in order to work on all of our required petition findings and listing determinations. This brings the total amount of funds we have for listing actions in FY 2010 to $11,585,417.

Starting in FY 2010, we also are using our funds to work on listing actions for foreign species, because that work was transferred from the Division of Scientific Authority, International Affairs Program, to the Endangered Species Program. Our process is to make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. The $11,585,417 is being used to fund work in the following categories: Compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the ESA) listing actions with absolute statutory deadlines; essential litigation-related, administrative, and listing program-management functions; and high-priority listing actions for some of our candidate species. The allocations for each specific listing action are identified

in the Service's FY 2010 Allocation Table (part of our administrative record).

In FY 2007, we had more than 120 species with an LPN of 2, based on our September 21, 1983, guidance for assigning an LPN for each candidate species (48 FR 43098). Using this guidance, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats (high vs. moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: monotypic genus (a species that is the sole member of a genus); species; or part of a species (subspecies, DPS, or significant portion of the range)). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority). Because of the large number of high-priority species, we further ranked the candidate species with an LPN of 2 by using the following extinction-risk type criteria: International Union for the Conservation of Nature and Natural Resources (IUCN) Red list status/rank, Heritage rank (provided by NatureServe), Heritage threat rank (provided by NatureServe), and species currently with fewer than 50 individuals, or 4 or fewer populations. Those species with the highest IUCN rank (critically endangered), the highest Heritage rank (G1), the highest Heritage threat rank (substantial, imminent threats), and currently with fewer than 50 individuals, or fewer than 4 populations, comprised a group of approximately 40 candidate species ("Top 40"). These 40 candidate species have had the highest priority to receive funding to work on a proposed listing determination. As we work on proposed and final listing rules for these 40 candidates, we are applying the ranking criteria to the next group of candidates with an LPN of 2 and 3 to determine the next set of highest priority candidate species.

To be more efficient in our listing process, as we work on proposed rules for these species in the next several years, we are preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as a species with an LPN of 2. In addition, available staff resources also are a factor in determining high-priority species provided with funding. Finally, proposed rules for reclassification of threatened species to endangered are lower priority, since as listed species, they are already afforded the protection of the ESA and implementing regulations.

We assigned *Eriogonum soredium, Lepidium ostleri* and *Trifolium friscanum* an LPN of 8. This is based on our finding that the species face immediate and moderate magnitude threats from the present or threatened destruction, modification or curtailment of its habitat; the inadequacy of existing regulatory mechanisms; and other natural or man-made factors affecting their continued existence. These threats are ongoing and, in some cases (*e.g.,* nonnative species), considered irreversible. Under our 1983 Guidelines, a "species" facing imminent moderate-magnitude threats is assigned an LPN of 7, 8, or 9 depending on its taxonomic status. Because *E. soredium, L. ostleri* and *T. friscanum* are species, we assigned an LPN of 8 to each. Therefore, work on a proposed listing determination for *E. soredium, L. ostleri* and *T. friscanum* is precluded by work on higher priority candidate species (*i.e.,* species with LPN of 7); listing actions with absolute statutory, court ordered, or court-approved deadlines; and final listing determinations for those species that were proposed for listing with funds from previous FYs. This work includes all the actions listed in the tables below under expeditious progress.

As explained above, a determination that listing is warranted but precluded also must demonstrate that expeditious progress is being made to add or remove qualified species to and from the Lists of Endangered and Threatened Wildlife and Plants. (Although we do not discuss it in detail here, we also are making expeditious progress in removing species from the Lists under the Recovery program, which is funded by a separate line item in the budget of the Endangered Species Program. As explained above in our description of the statutory cap on Listing Program funds, the Recovery Program funds and actions supported by them cannot be considered in determining expeditious progress made in the Listing Program.) As with our "precluded" finding, expeditious progress in adding qualified species to the Lists is a function of the resources available and the competing demands for those funds. Given that limitation, we find that we are making progress in FY 2010 in the Listing Program. This progress included preparing and publishing the following determinations:

FY 2010 Completed Listing Actions

Publication date	Title	Actions	**Federal Register** pages
10/08/2009	Listing *Lepidium papilliferum* (Slickspot Peppergrass) as a Threatened Species Throughout Its Range.	Final Listing, Threatened	74 FR 52013–52064.
10/27/2009	90-day Finding on a Petition To List the American Dipper in the Black Hills of SD as Threatened or Endangered.	Notice of 90-day Petition Finding, Not substantial.	74 FR 55177–55180.
10/28/2009	Status Review of Arctic Grayling (*Thymallus arcticus*) in the Upper Missouri River System.	Notice of Intent to Conduct Status Review.	74 FR 55524–55525.
11/03/2009	Listing the British Columbia DPS of the Queen Charlotte Goshawk Under the ESA: Proposed rule.	Proposed Listing Threatened	74 FR 56757–56770.
11/03/2009	Listing the Salmon-Crested Cockatoo as Threatened Throughout Its Range with Special Rule.	Proposed Listing Threatened	74 FR 56770–56791.
11/23/2009	Status Review of Gunnison sage-grouse (*Centrocercus minimus*)	Notice of Intent to Conduct Status Review.	74 FR 61100–61102.
12/03/2009	12-Month Finding on a Petition to List the Black-tailed Prairie Dog as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	74 FR 63343–63366.
12/03/2009	90-Day Finding on a Petition to List Sprague's Pipit as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial.	74 FR 63337–63343.
12/15/2009	90-Day Finding on Petitions To List Nine Species of Mussels From TX as Threatened or Endangered With Critical Habitat.	Notice of 90-day Petition Finding, Substantial.	74 FR 66260–66271.
12/16/2009	Partial 90-Day Finding on a Petition to List 475 Species in the Southwestern U.S. as Threatened or Endangered With Critical Habitat.	Notice of 90-day Petition Finding, Not substantial & Substantial.	74 FR 66865–66905.

FY 2010 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	**Federal Register** pages
12/17/2009	12-month Finding on a Petition To Change the Final Listing of the DPS of the Canada Lynx To Include NM.	Notice of 12-month petition finding, Warranted but precluded.	74 FR 66937–66950.
01/05/2010	Listing Foreign Bird Species in Peru & Bolivia as Endangered Throughout Their Range.	Proposed Listing, Endangered ...	75 FR 605–649.
01/05/2010	Listing Six Foreign Birds as Endangered Throughout Their Range	Proposed Listing, Endangered ...	75 FR 286–310.
01/05/2010	Withdrawal of Proposed Rule to List Cook's Petrel	Proposed rule, withdrawal	75 FR 310–316.
01/05/2010	Final Rule to List the Galapagos Petrel & Heinroth's Shearwater as Threatened Throughout Their Ranges.	Final Listing, Threatened	75 FR 235–250.
01/20/2010	Initiation of Status Review for *Agave eggersiana & Solanum conocarpum*.	Notice of Intent to Conduct Status Review.	75 FR 3190–3191.
02/09/2010	12-month Finding on a Petition to List the American Pika as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	75 FR 6437–6471.
02/25/2010	12-Month Finding on a Petition To List the Sonoran Desert Population of the Bald Eagle as a Threatened or Endangered DPS.	Notice of 12-month petition finding, Not warranted.	75 FR 8601–8621.
02/25/2010	Withdrawal of Proposed Rule To List the Southwestern Washington/Columbia River DPS of Coastal Cutthroat Trout (*Oncorhynchus clarki clarki*) as Threatened.	Withdrawal of Proposed Rule to List.	75 FR 8621–8644.
03/18/2010	90-Day Finding on a Petition to List the Berry Cave Salamander as Endangered.	Notice of 90-day Petition Finding, Substantial.	75 FR 13068–13071.
03/23/2010	90-Day Finding on a Petition to List the Southern Hickorynut Mussel (*Obovaria jacksoniana*) as Endangered or Threatened.	Notice of 90-day Petition Finding, Not substantial.	75 FR 13717–13720.
03/23/2010	90-Day Finding on a Petition to List the Striped Newt as Threatened.	Notice of 90-day Petition Finding, Substantial.	75 FR 13720–13726.
03/23/2010	12-Month Findings for Petitions to List the Greater Sage-Grouse (*Centrocercus urophasianus*) as Threatened or Endangered.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 13910–14014.
03/31/2010	12-Month Finding on a Petition to List the Tucson Shovel-Nosed Snake (*Chionactis occipitalis klauberi*) as Threatened or Endangered with Critical Habitat.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 16050–16065.
04/05/2010	90-Day Finding on a Petition To List Thorne's Hairstreak Butterfly as or Endangered.	Notice of 90-day Petition Finding, Substantial.	75 FR 17062–17070.
04/06/2010	12-month Finding on a Petition To List the Mountain Whitefish in the Big Lost River, ID, as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	75 FR 17352–17363.
04/06/2010	90-Day Finding on a Petition to List a Stonefly (*Isoperla jewetti*) and a Mayfly (*Fallceon eatoni*) as Threatened or Endangered with Critical Habitat.	Notice of 90-day Petition Finding, Not substantial.	75 FR 17363–17367.
04/07/2010	12-Month Finding on a Petition to Reclassify the Delta Smelt From Threatened to Endangered Throughout Its Range.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 17667–17680.
04/13/2010	Determination of Endangered Status for 48 Species on Kauai & Designation of Critical Habitat.	Final Listing, Endangered	75 FR 18959–19165.
04/15/2010	Initiation of Status Review of the North American Wolverine in the Contiguous U.S.	Notice of Initiation of Status Review.	75 FR 19591–19592.
04/15/2010	12-Month Finding on a Petition to List the Wyoming Pocket Gopher as Endangered or Threatened with Critical Habitat.	Notice of 12-month petition finding, Not warranted.	75 FR 19592–19607.
04/16/2010	90-Day Finding on a Petition to List a DPS of the Fisher in Its U.S. Northern Rocky Mountain Range as Endangered or Threatened with Critical Habitat.	Notice of 90-day Petition Finding, Substantial.	75 FR 19925–19935.
04/20/2010	Initiation of Status Review for Sacramento splittail (*Pogonichthys macrolepidotus*).	Notice of Initiation of Status Review.	75 FR 20547–20548.
04/26/2010	90-Day Finding on a Petition to List the Harlequin Butterfly as Endangered.	Notice of 90-day Petition Finding, Substantial.	75 FR 21568–21571.
04/27/2010	12-Month Finding on a Petition to List Susan's Purse-making Caddisfly (*Ochrotrichia susanae*) as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	75 FR 22012–22025.
04/27/2010	90-Day Finding on a Petition to List the Mohave Ground Squirrel as Endangered with Critical Habitat.	Notice of 90-day Petition Finding, Substantial.	75 FR 22063–22070.
05/04/2010	90-Day Finding on a Petition to List Hermes Copper Butterfly as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial.	75 FR 23654–23663.
06/01/2010	90-Day Finding on a Petition To List *Castanea pumila* var. *ozarkensis*.	Notice of 90-day Petition Finding, Substantial.	75 FR 30313–30318.
06/01/2010	12-Month Finding on a Petition to List the White-tailed Prairie Dog as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	75 FR 30338–30363.
06/09/2010	90-Day Finding on a Petition To List van Rossem's Gull-billed Tern as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	75 FR 32728–32734.

Our expeditious progress also includes work on listing actions that we funded in FY 2010 but have not yet been completed to date. These actions are listed below. Actions in the top section of the table are being conducted under a deadline set by a court. Actions in the middle section of the table are being conducted to meet statutory timelines, that is, timelines required under the ESA. Actions in the bottom section of the table are high-priority listing actions. These actions include work primarily on species with an LPN of 2, and selection of these species is

partially based on available staff resources, and when appropriate, include species with a lower priority if they overlap geographically or have the same threats as the species with the high priority. Including these species together in the same proposed rule results in considerable savings in time and funding, as compared to preparing separate proposed rules for each of them in the future.

ACTIONS FUNDED IN FY 2010 BUT NOT YET COMPLETED

Species	Action
Actions Subject to Court Order/Settlement Agreement:	
6 Birds from Eurasia	Final listing determination.
Flat-tailed horned lizard	Final listing determination.
Mountain plover	Final listing determination.
6 Birds from Peru	Proposed listing determination.
Sacramento splittail	Proposed listing determination.
Gunnison sage-grouse	12-month petition finding.
Wolverine	12-month petition finding.
Montana Arctic grayling	12-month petition finding.
Agave eggersiana	12-month petition finding.
Solanum conocarpum	12-month petition finding.
Mountain plover	12-month petition finding.
Thorne's Hairstreak Butterfly	12-month petition finding.
Hermes copper butterfly	12-month petition finding.
Actions With Statutory Deadlines:	
Casey's june beetle	Final listing determination.
Georgia pigtoe, interrupted rocksnail, and rough hornsnail	Final listing determination.
2 Hawaiian damselflies	Final listing determination.
African penguin	Final listing determination.
3 Foreign bird species (Andean flamingo, Chilean woodstar, St. Lucia forest thrush)	Final listing determination.
5 Penguin species	Final listing determination.
Southern rockhopper penguin—Campbell Plateau population	Final listing determination.
5 Bird species from Colombia and Ecuador	Final listing determination.
7 Bird species from Brazil	Final listing determination.
Queen Charlotte goshawk	Final listing determination.
Salmon crested cockatoo	Proposed listing determination.
Black-footed albatross	12-month petition finding.
Mount Charleston blue butterfly	12-month petition finding.
Least chub [1]	12-month petition finding.
Mojave fringe-toed lizard [1]	12-month petition finding.
Pygmy rabbit (rangewide) [1]	12-month petition finding.
Kokanee—Lake Sammamish population [1]	12-month petition finding.
Delta smelt (uplisting)	12-month petition finding.
Cactus ferruginous pygmy-owl [1]	12-month petition finding.
Northern leopard frog	12-month petition finding.
Tehachapi slender salamander	12-month petition finding.
Coqui Llanero	12-month petition finding.
White-sided jackrabbit	12-month petition finding.
Jemez Mountains salamander	12-month petition finding.
Dusky tree vole	12-month petition finding.
Eagle Lake trout [1]	12-month petition finding.
29 of 206 species	12-month petition finding.
Desert tortoise—Sonoran population	12-month petition finding.
Gopher tortoise—eastern population	12-month petition finding.
Amargosa toad	12-month petition finding.
Pacific walrus	12-month petition finding.
Wrights marsh thistle	12-month petition finding.
67 of 475 southwest species	12-month petition finding.
9 Southwest mussel species	12-month petition finding.
14 parrots (foreign species)	12-month petition finding.
Berry Cave salamander [1]	12-month petition finding.
Striped Newt [1]	12-month petition finding.
Fisher—Northern Rocky Mountain Range [1]	12-month petition finding.
Mohave Ground Squirrel [1]	12-month petition finding.
Puerto Rico Harlequin Butterfly	12-month petition finding.
Western gull-billed tern	12-month petition finding.
Ozark chinquapin (*Castanea pumila* var. *ozarkensis*)	12-month petition finding.
Southeastern population of snowy plover and wintering population of piping plover [1]	90-day petition finding.
Eagle Lake trout [1]	90-day petition finding.
Smooth-billed ani [1]	90-day petition finding.
Bay Springs salamander [1]	90-day petition finding.
32 species of snails and slugs [1]	90-day petition finding.
Calopogon oklahomensis [1]	90-day petition finding.
White-bark pine	90-day petition finding.
42 snail species (Nevada and Utah)	90-day petition finding.
HI yellow-faced bees	90-day petition finding.
Red knot *roselaari subspecies*	90-day petition finding.

ACTIONS FUNDED IN FY 2010 BUT NOT YET COMPLETED—Continued

Species	Action
Honduran emerald	90-day petition finding.
Peary caribou	90-day petition finding.
Plains bison	90-day petition finding.
Giant Palouse earthworm	90-day petition finding.
Mexican gray wolf	90-day petition finding.
Spring Mountains checkerspot butterfly	90-day petition finding.
Spring pygmy sunfish	90-day petition finding.
San Francisco manzanita	90-day petition finding.
Bay skipper	90-day petition finding.
Unsilvered fritillary	90-day petition finding.
Texas kangaroo rat	90-day petition finding.
Spot-tailed earless lizard	90-day petition finding.
Eastern small-footed bat	90-day petition finding.
Northern long-eared bat	90-day petition finding.
Prairie chub	90-day petition finding.
10 species of Great Basin butterfly	90-day petition finding.
6 sand dune (scarab) beetles	90-day petition finding.
Golden-winged warbler	90-day petition finding.
Sand-verbena moth	90-day petition finding.
Aztec (beautiful) gilia	90-day petition finding.
Arapahoe snowfly	90-day petition finding.
High-Priority Listing Actions: [3]	
19 Oahu candidate species [3] (16 plants, 3 damselflies) (15 with LPN = 2, 3 with LPN = 3, 1 with LPN = 9).	Proposed listing.
17 Maui-Nui candidate species [3] (14 plants, 3 tree snails) (12 with LPN = 2, 2 with LPN = 3, 3 with LPN = 8).	Proposed listing.
Sand dune lizard [3] (LPN = 2)	Proposed listing.
2 Arizona springsnails [3] (*Pyrgulopsis bernadina* (LPN = 2), *Pyrgulopsis trivialis* (LPN = 2)	Proposed listing.
2 New Mexico springsnails [3] (*Pyrgulopsis chupaderae* (LPN = 2), *Pyrgulopsis thermalis* (LPN = 11)	Proposed listing.
2 mussels [3] (rayed bean (LPN = 2), snuffbox (No LPN)	Proposed listing.
2 mussels [3] (sheepnose (LPN = 2), spectaclecase (LPN = 4))	Proposed listing.
Ozark hellbender [2] (LPN = 3)	Proposed listing.
Altamaha spinymussel [3] (LPN = 2)	Proposed listing.
5 southeast fish [3] (rush darter (LPN = 2), chucky madtom (LPN = 2), yellowcheek darter (LPN = 2), Cumberland darter (LPN = 5), laurel dace (LPN = 5).	Proposed listing.
8 southeast mussels (southern kidneyshell (LPN = 2), round ebonyshell (LPN = 2), Alabama pearlshell (LPN = 2), southern sandshell (LPN = 5), fuzzy pigtoe (LPN = 5), Choctaw bean (LPN = 5), narrow pigtoe (LPN = 5), & tapered pigtoe (LPN = 11)).	Proposed listing.
3 Colorado plants [3] (Pagosa skyrocket (*Ipomopsis polyantha*) (LPN = 2), Parchute beardtongue (*Penstemon debilis*) (LPN = 2), Debeque phacelia (*Phacelia submutica*) (LPN = 8)).	Proposed listing.
2 Texas plants (Texas golden gladecress (*Leavenworthia texana*) (LPN = 2), Neches River rose mallow (*Hibiscus dasycalyx*) (LPN = 5)).	Proposed listing.
Florida bonneted bat (LPN = 2)	Proposed listing.
Kittlitz's murrelet (LPN = 2)	Proposed listing.

[1] Funds for listing actions for these species were provided in previous FYs.

[2] We funded a proposed rule for this subspecies with an LPN of 3 ahead of other species with LPN of 2, because the threats to the species were so imminent and of a high magnitude that we considered emergency listing if we were unable to fund work on a proposed listing rule in FY 2008.

[3] Funds for these high-priority listing actions were provided in FY 2008 or 2009.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the ESA, these actions described above collectively constitute expeditious progress.

Eriogonum soredium, Lepidium ostleri, and *Trifolium friscanum* will be added to the list of candidate species upon publication of this 12-month finding. We will continue to monitor the status of these species as new information becomes available. This review will determine if a change in status is warranted, including the need to make prompt use of emergency listing procedures.

We intend that any proposed listing action for *Eriogonum soredium, Lepidium ostleri,* and *Trifolium friscanum* will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* or upon request from the Utah Ecological Services Field Office (*see* **ADDRESSES** section).

Authors

The primary authors of this notice are the staff members of the Utah Ecological Services Field Office.

Authority

The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 2, 2011.

Rowan W. Gould,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2011–3675 Filed 2–22–11; 8:45 am]

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S. 188/P.L. 112–2
To designate the United States courthouse under construction at 98 West First Street, Yuma, Arizona, as the ''John M. Roll United States Courthouse''. (Feb. 17, 2011; 125 Stat. 4)
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